DOCUMENT RESUME

ED 078 736 HE 004 199

AUTHOR	Duscha, Julius; Fischer, Thomas
TITLE	The Campus Press: Freedom and Responsibility.
INSTITUTION	American Association of State Colleges and Universities, Washington, D.C.
SPONS AGENCY	John and Mary R. Markle Foundation, New York, N.Y.
PUB DATE	Apr 73
NOTE	118p.
AVAILABLE FROM	American Association of State Colleges and Universities, One Dupont Circle, Suite 700, Washington, D.C. 20036 ($3.50)
EDRS PRICE	MF-$0.65 HC Not Available from EDRS.
DESCRIPTORS	Academic Freedom; *Freedom of Speech; *Higher Education; Legal Problems; *Legal Responsibility; News Media; Press Opinion; School Law; *School Newspapers; School Publications; *Student Rights

ABSTRACT

This document investigates the collegiate press. Part one--The Campus Press--observes the development, expectations and present status of the campus press. Conclusions indicate the need for an independent student newspaper. Part two reviews the law and the campus press, particularly legal distinctions between public and private colleges and universities and between campus press and public press, legal consequences for three ways of operating a university newspaper, responsibilities of the campus press, consequences of selection of staff, and legal consequences of using the institution's name. Appendices for part one include a 28-item bibliography, the University of California agreement, and articles of incorporation of the Daily Californian. Appendices for part two examine limitations of free speech and review important cases. (MJM)

FILMED FROM BEST AVAILABLE COPY

ED 078736

The Campus Press:
Freedom and Responsibility

Prepared by Julius Duscha and Thomas Fischer

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL BY MICROFICHE ONLY HAS BEEN GRANTED BY
American Association of State College and Universities
TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER."

HE 004 199

A Publication of the American Association of State Colleges and Universities under the sponsorship of the John and Mary R. Markle Foundation

One Dupont Circle
Washington, D.C. 20036

April, 1973

Copyright © American Association of State Colleges and Universities 1973

Library of Congress Catalog Number 73-78230

Copies are available for $3.50 from the American Association of State Colleges and Universities, One Dupont Circle, Suite 700, Washington, D.C. 20036

Pre-payment required for all orders $5.00 and under

Designed by Stansbury: Design Inc

Contents

	Page
Introduction	1

THE CAMPUS PRESS
Julius Duscha

Introduction	6
The Press in the United States	7
The Development of the Campus Press	9
What is Expected of the Campus Press?	11
Similarities Between the Campus Press and the General Press	12
Differences Between the Campus Press and the General Press	13
Three Basic Ways to Operate a Campus Newspaper	13
The First Alternative: A University-Controlled Paper	14
The Second Alternative: An Amorphous Situation	15
The Third Alternative: Genuine Independence	17
The Ideal Campus Newspaper	18
Responsibility and the Press	19
Community Newspapers vs. Journals of Opinion	20
The Status of Student Newspapers During the 1960's	21
The Recent Controversies Over the Student Press	21
A Case Study: The University of California	23
Another Example: *The Stanford Daily*	27
How the University of Oregon Did It	29
The University of Florida's Experience	30
The *Columbia Spectators'* Troubles	31
The University of Maryland's Approach	32
A Pattern for Many Schools	35
Some Conclusions	35

Contents

Appendix

I. University of California Agreement 41
II. *Articles of Incorporation of The Daily Californian* 44
III. Bibliography 46

THE LAW AND THE CAMPUS PRESS
Thomas C. Fischer

Freedom of Speech and Freedom of the Press: An Historical Perspective 50
Legal Distinctions Between Public and Private Colleges and Universities 52
Legal Distinctions Between the Campus Press and the Public Press 55
Three Ways to Operate a University Newspaper and the Legal Consequences Thereof 59
Legal Consequences Resulting From the Use of the Institution's Name 71
Responsibilities of the Campus Press 73
Consequences of Selection and De-selection of Student Newspaper Personnel 87
Limitations on Free Speech: *Tinker* Examined 89
Conclusion 91
Review of Important Cases 94
Footnotes 105

Introduction

During the late 60's and early 70's the student newspapers on many college and university campuses went through troubled times. As a result some were suspended from publication, articles were censored, editions were confiscated, editors were fired, and some newspapers moved off campus so as to be free of institutional ties and sponsorship. In order to take stock of recent trends in the collegiate press and to develop a perspective from which useful guidelines and operational understandings might grow, the American Association of State Colleges and Universities, through its Committee on Academic and Student Personnel, developed a proposal for a study of the collegiate press. This proposal was presented to the John and Mary R. Markle Foundation which was currently supporting projects for strengthening the educational uses of mass media and communications technology. They agreed to sponsor the project.

A National Advisory Committee, selected from college and university presidents, journalism professors, metropolitan editors and student editors was convened. The Committee was fortunate in obtaining the services of Julius Duscha, Director of The Washington Journalism Center, Thomas C. Fischer, Consultant in Higher Education and former Assistant Dean of the Georgetown University Law Center, and Dr. Owen R. Houghton, Consultant for Special Projects, American Association of State Colleges and Universities. The report of this Committee is in reality the personal work of Julius Duscha and Tom Fischer. The Committee merely set the study parameters, reviewed and discussed issues with the principal authors, and provided editorial and critical comments. We are pleased with the results and we trust that this document will prove useful to college and university administrators, trustees, students, faculty and editors who concern themselves with the collegiate press.

On behalf of the Committee I would like to thank the John and Mary R. Markle Foundation for their generous support. Our special thanks go to Julius Duscha, Tom Fischer and Owen Houghton. This project would, of course, not have been possible without the encouragement of Allan Ostar, Executive Director of the AASCU. My personal thanks go to the members of the Committee listed below. Their conscientious service and good humor made it especially enjoyable to serve as their chairman.

Thomas H. McGrath

The National Advisory Committee on the Student Press

Kathy Fraze	Editor, **BG News** Bowling Green State University
Hillier Krieghbaum	Professor of Journalism New York University Immediate Past President of the Association for Education in Journalism
Richard J. Nelson	President Northern Illinois University
Guy Ryan	Assistant Managing Editor **San Diego Evening Tribune** Immediate Past National President Sigma Delta Chi
James Bond	President California State University, Sacramento
Owen R. Houghton	Consultant for Special Projects American Association of State Colleges and Universities
Thomas McGrath, Chairman	President, California State College, Sonoma

The Campus Press—
Julius Duscha

"The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion, for, as Bagehot points out, once force is thrown into the argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantage in the contest. Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom.

"Or to put the matter another way, it is useless to define free speech by talk about rights. The agitator asserts his constitutional right to speak, the government asserts its constitutional right to wage war. The result is a deadlock. Each side takes the position of the man who was arrested for swinging his arms and hitting another in the nose, and asked the judge if he did not have the right to swing his arms in a free country. 'Your right to swing your arms ends just where the other man's nose begins.' To find the boundary line of any right, we must get behind rules of law to human facts. In our problem, we must regard the desires and needs of the individual human being who wants to speak and those of the great group of human beings among whom he speaks. That is, in technical language, there are individual interests and social interests, which must be balanced against each other, if they conflict, in order to determine which interest shall be sacrificed under the circumstances and which shall be protected and become the foundation of a legal right. It must never be forgotten that the balancing cannot be properly done unless all the interests involved are adequately ascertained, and the great evil of all this talk about rights is that each side is so busy denying the other's claim to rights that it entirely overlooks the human desires and needs behind that claim."

--Zechariah Chafee Jr.
Free Speech in the United States.

Introduction

The men who drafted the First Amendment to the Constitution of the United States were not thinking about campus newspapers, for so far as is known only one student newspaper existed at the time in Philadelphia. But the Founding Fathers were concerned about the freedom of all Americans, whether college students or Members of Congress, to be able to say and write whatever they believed.

This report starts from the premise that students do not lose their right of free speech when they matriculate in a college or university. If a campus newspaper is to fulfill its many purposes, it must be free within the law to publish what it wishes.

Any discussion of the campus press must begin and end with the American concept of freedom of speech and of the press.

"Congress," declares the First Amendment, "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

During the nearly two centuries of the American experience the right to freedom of speech and the press has remained as absolute as any constitutional right.

Although some distinguished legal scholars like the late Justice Hugo Black of the U.S. Supreme Court have maintained that the Founding Fathers meant exactly what they said when they proclaimed that "Congress shall make ***no*** law...abridging the freedom of speech, or of the press," the classic limitations on the First Amendment were set out by Justice Oliver Wendell Holmes in 1919 when he said in a Supreme Court Decision:

"The First Amendment... obviously was not intended to give immunity for every possible use of language... We venture to believe that neither Hamilton nor Madison, nor any other competent person then or later, ever supposed that to make criminal the counselling of a murder... would be an unconstitutional interference with free speech...

"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

Thus, there are limitations on free speech and a free press, but they are few indeed and are meant only for situations which truly endanger life or the survival of the country itself. And there are laws protecting individuals against libel and slander.

The Press in the United States

There are two dominant traditions in the American press. One is the tradition that daily and weekly newspapers should serve a diverse readership, a mass audience rather than an elite one. The other is the crusading tradition of rooting out corruption and evil wherever it exists.

The crusading tradition is sometimes honored more in the breach than in the observance, but all editors and publishers accept the idea that newspapers should try to serve a mass audience with everything from sports news, comics and entertainment to the reporting of serious governmental matters.

Although most newspapers today strive in their news coverage for independence, most of the press in the early days of the Republic was made up of party or factional organs. Throughout much of the nineteenth century large numbers of newspapers were published, each with a small circulation and each generally with a highly partisan point of view.

By the late nineteenth century the economics of publishing and the development of a national news agency – the Associated Press–serving many different newspapers led to basic changes in American publishing.

The economic base of newspapers shifted from circulation income to advertising revenues. For American newspapers today advertising is still the principal source of revenue.

To a considerable degree, the reliance on advertising income meant that the less partisan a newspaper was in its news coverage the more likely it was to appeal to a large audience. In that way, the newspaper would be more attractive to the advertiser seeking mass markets for his goods.

Probably as important as the trends in advertising was the development of news agencies like the Associated Press and what is now United Press International.

The Associated Press began as a cooperative organized by newspapers in different parts of the country that wanted to exchange news. The original United Press (now United Press International) was established as a commercial enterprise.

The news agencies soon were serving newspapers of all political colorations, and they found that the only way to do this was through news reports which sought to be factual.

Thus, early in the twentieth century, the trend toward objective news coverage was underway. What this often meant, however, was that newspapers simply reported what was being said on both sides of an issue or controversy, leaving the bewildered reader to make up his own mind.

But another important trend developed at the turn of the century, too. This was the tradition of crusading, best exemplified

perhaps by the writing and reporting of Lincoln Steffens.

Thus, in the early years of the twentieth century, the press was financed largely by advertising and priced and written to appeal to the widest possible audience. It was a press that offered something for everyone from the humblest workingman to the biggest businessman. To do this, the newspaper generally tried to go down the middle in its coverage of controversial events and issues.

But the crusading tradition was also developing, and when wrongdoing is being exposed it can seldom be done in an even-handed neutral manner.

By the 1930's, the trend toward a monopoly press became strong. Economic conditions forced many newspapers out of business and led to consolidations which often resulted in the publication of only one newspaper in a city of considerable size.

The trend to one-newspaper cities tended to reinforce factual, down-the-middle reporting which presumably would not offend readers, who if they did not like the newspaper had nowhere else to turn. The editors and publisher of a monopoly newspaper realized, too, that the simplest and easiest path was to report what was being said on both sides of an issue or controversy without making judgments on the matters under contention.

The difficulty with what has come to be known as objective news coverage is that it often tends to reinforce the status quo rather than give adequate attention to critical views of the country. Also, objective reporting too often gives undue advantage to advocates of a position who happen to be loud and persistent.

The advent of, first, radio news and, then, television news gave impetus in the 1940's and 1950's to a reevaluation by editors and press critics alike of the role of newspapers and the place of objective reporting in a journalistic world where the initial report of a news event was being brought to Americans by radio or television and where readers of newspapers increasingly came to expect more than a mere recital of the facts of a situation. More and more, readers as well as editors and reporters wanted to know the meaning of a news event.

At the same time, the world itself became infinitely more complicated. Beginning with the New Deal legislation of the 1930's, the role of government loomed ever larger. The atomic bomb and other developments further complicated the world and expanded news horizons. The difficult-to-understand field of economics became an everyday governmental concern that the public needed to know about. And the findings of other social scientists began to impinge on the lives of all Americans.

The more complicated nature of news events combined with the increasing competition of radio and television news prompted newspaper editors and reporters to reassess their role in the dissemination of information.

The late radio commentator Elmer Davis was one of the first journalists to raise the issue of objectivity in the early 1950's after the media reported as fact assertions by the late Senator Joseph McCarthy of Wisconsin about the role of Communists in the Federal government. Many of McCarthy's statements later turned out not to be true.

This reevaluation of the role of the journalist resulted in a greater emphasis on efforts to interpret and background the news. It was no longer enough to tell what happened, it was now necessary also to explain why something happened.

An ideal general-circulation newspaper today, thus, should present in its news pages not only a balanced account of what is happening in the world but also a comprehensive interpretation of the meaning of significant news events. In addition, on its editorial page the newspaper should present its opinions of what is going on in its community as well as throughout the nation and the world.

Seldom are these ideals realized in American journalism, any more than ideal performances are reached elsewhere in American life.

But both the ideals and practices discussed above make up the journalistic world of which the campus press is a part. Establishment-oriented on the one hand, the general-circulation newspapers are also fiercely proud of their independence and of their crusading, let-the-chips-fall-where-they-may traditions.

Finally, a new journalistic trend called advocacy reporting is appearing and is particularly appealing to young reporters. This concept embraces the idea that the reporter who has taken a good deal of time to look into a subject should be able to state in the course of writing his news story what he personally thinks about the situation. This trend, too, must be considered in evaluating and determining the role of the campus press.

The Development of the Campus Press

The first campus newspaper was established at Dartmouth College in 1839. It was a weekly. The first daily was published at Yale University in 1873, and of course the ***Yale Daily News*** is still flourishing. Ten years later, in 1883, the ***Harvard Crimson*** went daily. The first weekly student newspaper at Harvard had been established in 1856.

By the late nineteenth century most colleges and universities had at least weekly newspapers, and many already had dailies. As higher education expanded in the United States during the twentieth century so did the number, size and frequency of issue of student newspapers.

Today there are more than 1200 college and university newspapers, and many of them are published daily. (Generally, a daily student newspaper is put out on Mondays through Fridays during

the school year, with no issues published during examination periods or vacations.)

Student newspapers are big business. More than six million copies are printed each week. The papers are usually financed at least in part by student-activity fees and distributed to all students. The Intercollegiate Press Association, founded in 1886, and the ten-year-old U.S. Student Press Association are nation-wide trade associations for campus newspapers. The Student Press Association also operates the Collegiate Press Service for college and university papers.

The campus press not only constitutes a large number of newspapers; it also represents an important advertising medium. National advertisers seeking to reach the student market rely heavily on campus newspapers. Such advertisers as the manufacturers of phonograph records find the campus press particularly advantageous. Proprietors of local businesses in a campus area also rely heavily on advertisements in student newspapers.

The earliest college and university newspapers generally were independent publications depending for their money on advertising and circulation revenues. These early papers were small, had small staffs, and consequently did not need much money to survive.

As publicly-supported institutions of higher learning were founded and developed into large enterprises, the funding of student newspapers began to change.

The campus publications started to rely more and more on college and university funds, generally channeled to the publications through the allocation to them of a portion of the activity fees which all students were required to pay and which covered such activities as sporting events as well as publications.

With the advent of student-activity fees or, in some cases, the direct appropriation of college and university funds to student newspapers, publication boards were generally set up to oversee the campus newspaper as well as other student publications such as a yearbook, a literary magazine and a humor magazine.

The publications board usually was composed of both faculty members and students. The student members generally were drawn from the editors of the student publications. In most cases, faculty and/or administrators held the majority of the seats on the publications boards.

The duties of the boards ranged from formally picking the editors of the campus press to trying to adjudicate disputes between the administration and the student newspaper. In some cases, the publications board also had leeway in allocating funds to the various student publications.

It has not been unusual for college or university presidents or for other administrative officials to step into disputes involving the student press, despite the existence of a publications board. A president, for example, might want to prevent a certain student from

being appointed editor of the campus newspaper because of past disagreements with him over the coverage of campus news.

In some instances, student newspapers have been responsible to student governing bodies rather than to publications boards. In such situations the problem has been the amount of control the student governing board wished to exert over the campus newspapers. Sometimes the student board has directly imposed its political views on the campus newspaper.

Some student newspapers have been run by journalism departments or schools as laboratory workshops and as such under the direct supervision of the journalism faculty, and still other student papers have been funded directly with college or university funds.

What is expected of the Campus Press?

A basic problem with the campus press is that its role is perceived in diverse ways by its varied constituencies:

1. Individual members of boards of regents or boards of trustees frequently regard student newspapers as arms of the institutions that ought to reflect the members' values of society and education.

2. College or university presidents and other campus administrators want student newspapers to report administrative decisions accurately and fairly. This may mean that the officials of the institutions believe that the papers should only speak well of the good intentions of the administrators.

3. Many student editors and reporters view themselves as following in the honorable traditions of the great journalistic crusaders and believe that reporting in such a spirit will not always find the administrators or the trustees in the right.

4. The students for whom the papers are primarily published read them for all sorts of reasons, ranging from an interest in important campus problems to merely finding out what's on at the movies, and often have ambivalent attitudes toward the editors' concept of the papers' purposes.

5. The faculties and staffs of colleges or universities, important secondary audiences for the papers, look to them for news of administrative actions and other matters affecting their jobs and working conditions.

6. For students as well as faculties and staffs, the papers serve as bulletin boards listing routine but important meetings and other matters on the campus.

7. If the colleges or universities have journalism faculties, their members may look on the student newspapers as opportunities for the training of reporters and editors.

8. Persons outside the colleges or universities, ranging from legislators, regents or trustees, alumni and parents of students to

editors and reporters for general-circulation newspapers and radio and television stations in the area, read the campus newspapers for day-to-day, week-to-week reviews of the moods of students and faculties.

9. Campus or off-campus critics of the institutions see the papers as sources of information to use in launching attacks on the institutions.

Similarities Between the Campus Press and the General Press

Like the general press, a student newspaper serves a fairly well-defined community – embracing students, faculty, administration and the area surrounding the college or university where students live. A general-circulation newspaper has a well-defined distribution area usually encompassing a town, city or metropolitan area but sometimes extending throughout a state.

A general newspaper is written and edited to serve a broad audience of many different ages, incomes and interests. The editor does not expect everyone who buys his paper to read everything in it. The reader is expected to pick and choose among a wide variety of items.

Some persons want the paper only for its sports or comic sections; others are most interested in the advertisements. Generally, only a limited number of readers are interested in reporting and commentary on serious news.

The audience for the campus press is not quite so diverse as that for the general press, but the campus audience is far from a monolithic one.

It includes the activists and the political sophisticates, but it also includes many students who may be far more interested in pursuing, say, their engineering or science degrees, than in campus or national political issues.

Among the readers of campus newspapers are many persons who are more interested in the sports pages or the movie advertisements than in serious reportage of political issues or such educational matters as proposed curriculum changes.

The general-circulation newspaper depends on advertising for most of its revenues, and some of the larger campus newspapers also are heavily dependent on advertising.

Thus, the similarities between the general press and campus newspapers revolve largely around the community concept of the newspapers and the general and diverse interests of the audiences being served. In addition, many large college and university papers, like all general-circulation publications, rely heavily on advertising for their income.

Differences Between the Campus Press and the General Press

There are of course important differences between campus newspapers and newspapers published for general distribution in a community.

The size and circulation of a campus publication will never be as large as a metropolitan newspaper for the quite obvious reason that a campus paper is by its very nature restricted in its coverage to a college or university community.

In addition, the campus community served by a student newspaper is somewhat better defined than the larger community served by a general-circulation publication.

Another difference between the campus press and general-circulation publications concerns financing.

While general-circulation newspapers are financed largely by advertising, campus newspapers rely in most cases for their funds on student-activity fees or direct grants from college or university funds.

These financial ties to colleges or universities mean that student newspapers are often published by the institution or a publications board which is part of the institution.

So, most student publications are not competing in the marketplace, but rather are being published with funds given to them by the college or university. This means, of course, that, as presently organized, most student publications are not truly independent. Whoever is the publisher of a newspaper will influence the publication, whether the publisher be an institution, a college or university official, a student-faculty publications board or a private individual.

Another important distinction between the campus press and the general-circulation press is the fact that student newspapers are put out by persons with very little experience – amateurs, some would call them – and that the student publications are considered by some institutions as laboratories for the learning of journalistic techniques and skills.

Three Basic Ways to Operate a Campus Newspaper.

There are three basic ways in which to set up a student or campus newspaper.

1. The student newspaper can be directly controlled by the university administration or by faculty members responsible to the administration.

2. The student newspaper can be placed in an amorphous situation by having it published by a publications board or a student governing body, and by having the newspaper financed at least in part with funds from the university or from a compulsory student activity fee.

3. The student newspaper can be truly independent, operating with no direction from the administrators of the institution and with no funds from the university or student activity fees.

The First Alternative: A University-Controlled Paper

University or college administrators or faculty members responsible to the administration can be placed directly in charge of a student newspaper.

Under such a system university funds or money from student-activity fees can be used to pay the costs of the newspaper, which can be published either directly by the institution or by a publications board responsive to the university or college administration.

An administrator or faculty member can be assigned as adviser to the newspaper and be given the responsibility of reviewing articles prior to their publication.

Under this system students can be nominally in charge of the newspaper, but real control is in the hands of the faculty member or administrator who serves as the paper's adviser.

This system has the advantage of clearly establishing publishing authority for the newspaper and control over its contents.

But any college or university that operates a newspaper in this manner should make it clear to students and faculty alike that this is not a newspaper published in the free-press traditions of the United States but rather is a house organ for the institution.

In the past many colleges and universities have operated student newspapers under the highly-controlled situation described above, but the trend in more recent years has been to cut such close ties between the institution and the newspaper.

Typically, the adviser for the newspaper would be a journalism faculty member. His responsibilities can and have varied a lot.

Such an adviser might read all of the material proposed for publication before the newspaper is published, or he might simply exercise general supervision over the newspaper while still remaining responsible for all of the contents of the publication.

The advantages of this alternative are obvious. With such close supervision by an administrator or faculty member the newspaper is not likely to publish anything embarrassing to the institution and its administrators.

But there are also distinct disadvantages with such a controlled system. A closely controlled student press is obviously not in the tradition of the free press in the United States.

Students who perceive higher education as being conducted in the ennobling spirit of free inquiry naturally will balk at efforts to control the contents of a newspaper.

Nevertheless, if the administrators of a college or university want to exercise firm control over the student newspaper, it can be done.

In pursuing such a course, however, the administration of the institution should be fully aware of the problems inherent in this course, particularly at a time when the trend both on and off-campus is to seek greater freedom in all aspects of campus and other activities.

The Second Alternative: An Amorphous Situation

The student newspaper can be placed in an amorphous situation by having it published by a publications board or a student governing body.

Ostensibly, a newspaper published under such conditions is independent of the institution and responsible only to the publications board or the governing body. Either group may, however, include in its membership faculty members or even administrators, but their role is only as one of many members of the board, and of course this is far different from having an administrator or faculty member placed directly in charge of the newspaper as outlined in the first alternative described above.

But when a publications board or a student governing body is involved, at least some of the financing of the newspaper usually comes from university funds or from student-activity fees.

This publishing and financing arrangement is the one found on most campuses, and its vagueness has been the cause of so many of the problems involving the campus press and administrators over the last few years.

The typical arrangement of this kind is generally set up in the following manner: A student governing body allocates a certain portion of student-activity fee funds to the student newspaper. Either the student governing body or a publications board is the publisher of the newspaper. If there is a publications board it is usually made up of faculty members and/or administrators as well as students. The publications board generally selects the principal editors of the newspaper as well as its business and advertising managers. If there is a journalism department or school at the college or university, one of the faculty members often serves as an adviser to the paper.

This is a handy arrangement for both the institution and the student editors, and this is probably why such arrangements have persisted for a long time on many campuses.

On the one hand, the student editors are assured enough financing to make up the difference between their publishing costs and advertising revenues. It is much easier to rely on a lump-sum payment from the student activity fee, in return for which the newspaper agrees to print enough papers each day or week so that every student may have one, than it is to sell the newspaper to individual subscribers or at bulk rates.

On the other hand, the college or university still can exercise some control over the student paper, and many presidents have not hesitated to use their authority over administrators and faculty members serving on publications boards to get the kind of editor who is deemed most likely to be sympathetic to the president and his administration.

There are many problems with this arrangement. First and foremost, there is the appearance of a free student press without the reality of it.

A publications board is an arm of the institution, which means that the real publisher in law as well as in fact turns out to be the president of the institution and not the students, faculty members and administrators who are on the board.

So when an article in the newspaper displeases a member of the board of regents or trustees, or, in the case of a public institution, a legislator, it is not surprising that the offended official calls or writes the president rather than the student editor.

It is a difficult situation for the institution. As long as the newspaper is financed in part by university funds or student-activity fees which must be paid by all students and are collected by the college or university, the institution is responsible for what is in the newspaper, regardless of disclaimers to the contrary.

Yet the institution has no effective control over the day-to-day operations of such a newspaper. The publications board itself has only a generalized sort of supervision of the paper.

The editors who do put out the paper from day to day or week to week are in control of the publication and are subject to removal from their positions by the publications board.

The student editor in such a situation who may argue that he is carrying on in the great traditions of the free American press is on weak ground, too.

He is subject to supervision by a publications board, and his paper is being subsidized with university funds or with compulsory student-activity fee funds, which are earmarked funds hardly distinguishable from direct appropriations out of college or university funds.

He is not working in the great traditions of the free press. A newspaper can be truly free only when it is supported voluntarily by readers and advertisers. It cannot have genuine freedom if it is subsidized either directly from university funds or indirectly through student activity funds.

A subsidized student press does give the student editor a certain amount of autonomy, but it is by no means the same as a truly free, unsubsidized press.

With subsidies to the press come strings and controls, whether the subsidies come directly from government or indirectly from student governing bodies dispensing student activity fees.

In this amorphous situation, therefore, the result is that both the student editor and the college or university administration are in a tenuous position.

The student editor looks on himself as a man carrying on the traditions of the free press, but in fact he is being subsidized with public funds.

The president and the rest of the administration of the institution tend much of the time to look on the paper as an independent entity but know that in fact the ultimate control of the paper is in the hands of the institution because of the paper's use of public funds, whether directly or indirectly.

The advantages of the arrangements for publishing a student newspaper outlined here are primarily financial, and it is often argued that on many campuses a newspaper cannot survive without some sort of institutional or student activity fee subsidy.

But there are grave disadvantages both to the institution and to the student editor in such an arrangement.

The institution is placed in the position of being ultimately responsible for a newspaper over which it in reality has little effective control.

The student editor considers himself independent, and is in the enviable position of having the payment of his bills assured while being given little supervision. But even more important, he does not have to worry about the acceptance of his product in the marketplace because his student audience is in fact a captive one.

The Third Alternative: Genuine Independence

The third way of operating a student newspaper is to make it truly independent.

Some of the most successful and most admired student newspapers have been independent for years. Among these are the ***Michigan Daily,*** the ***Harvard Crimson*** and the ***Yale Daily News.***

Some of the newspapers have built up endowments. Some own their own buildings and even their own printing plants.

For revenue, these newspapers rely on individual and bulk subscriptions and on funds generated by advertising. Additional revenue may come from special editions, student handbooks and similar publishing ventures.

But the problems of long-established independent newspapers are quite different from those likely to be encountered by a previously subsidized newspaper becoming independent.

The editor of a paper that has been distributed free of charge to all students is understandably reluctant to start charging for an independent paper.

It is possible, however, to operate a paper completely independent of a college or university by relying on advertising revenue and

by continuing to distribute the paper free.

Although the distribution which students consider to have been "free" is in fact generally subsidized by tax funds or student activity fees, students still consider that the paper is made available to them on campus without a specific charge.

Nevertheless, despite the financial difficulties that can be and will be encountered by a truly independent paper, the advantages of such a publication are obvious.

A newspaper published independently by students is not responsible in any way to the college or university. And, conversely, the institution is not responsible for what the newspaper prints.

An independent student newspaper is not without its perils for an institution, of course. However clear the fact of independence is made, alumni and others off campus frequently fail to understand that the newspaper is no longer officially connected with the institution even though the newspaper itself will often be at odds with the administration of the institution.

To be truly independent, a student newspaper must be organized and incorporated as an entity completely separate from the college or university.

The paper must not receive any subsidy directly or indirectly from the institution, either through free office space, higher than normal subscription prices for copies of the paper for faculty and staff, or abnormal advertising charges for the printing of official notices.

The institution should grant a license to a student corporation for the use of the name of the student newspaper. The license arrangement should be for a specific period of time and subject to periodic renewal.

As a condition of the licensing agreement, the paper should agree to run a statement each time it is published making clear that it is an independent publication not connected in any official way with the institution.

The advantages of an independent newspaper are so obvious that they hardly need elaboration. An independent paper becomes part of the great tradition of the free American press in fact as well as in name.

The independent paper is free to act as a separate entity beholden to no one, and can appraise events exactly as it sees them.

And the institution is not placed in the position of being responsible for actions and views of the students who are editing and publishing the paper.

The Ideal Campus Newspaper

Ideally, a student newspaper should be a community newspaper reflecting the diverse views of students, faculty members and

administrators, its news pages should be a mirror of the college or university community where it is published.

The points of view of administrators and students alike should be reported. News events should be covered so that the resulting articles fairly reflect the happenings or situations.

But being such a mirror of the community does not mean merely reporting who says what; rather, it means reflecting in some depth what is happening on the campus – and off the campus when the issues involved particularly concern students.

It is as difficult to set out precise standards for reporting as it is for the measurement of effective teaching or of good administration, but editors and reporters know when they are being fair and honest just as teachers and administrators know when they are doing a good job.

Standards for responsible reporting can be established by professional guidelines or through traditions built up by a campus newspaper.

On its editorial page, the paper should take stands on campus issues as well as on matters going on in the community where the campus is located, and in the rest of the country and the world.

But the opinions expressed on the editorial page should not creep into the news columns where the editors and reporters ought to be striving constantly for accuracy and fairness.

The trouble with the kind of prescription being outlined here is that this is what is ideally sought from every paper, on or off the campus, and seldom found anywhere.

The American press is not perfect, and never will be. And so it is now – and so it will be – with the campus press. Imperfect and less than satisfactory solutions to difficult problems constitute one of the prices paid for living in a democracy with a free press.

Responsibility and the Press

A word needs to be said about responsibility. The critics of the general-circulation press as well as of campus newspapers believe that the press should be responsible, and everyone's ideal is a responsible press.

But there is nothing in the Constitution requiring the press to be responsible. Not a word about responsibility.

In fact, freedom of the press includes the right to be irresponsible, for who is to decide what is responsible and what is not responsible?

The libel and slander laws make for some degree of responsibility. But responsibility is difficult if not impossible to measure, because efforts to define the word get all mixed up in one's perspective of the world and one's role in it.

To some, it might be considered highly responsible to print

without elaboration statements of college and university administrators. To others, this might be considered the height of irresponsibility.

If freedom of speech and of the press are to be maintained in the United States, everyone must be prepared to put up with some irresponsible statements and publications.

Community Newspapers vs. Journals of Opinion

Much of the discussion of the campus press in recent years has been muddied by confusion, among both students and faculty members, over the differences between a community newspaper and a journal of opinion.

There should be on campuses journals of opinion as well as a community newspaper. This report is concerned with the problems of community newspapers, not journals of opinion.

On every campus of any size there should be room for a campus-wide or community newspaper serving, among other purposes, the bulletin-board and information functions of a general-circulation newspaper and aimed at a broad campus readership.

There still is no substitute for a daily or weekly newspaper to keep a community informed about the essentials of life—which on a campus means class schedules, faculty appointments, the activities of student organizations, information about campus events, etc.

Editors do not like to admit it, but most readers want a newspaper to keep them abreast of what might be called the vital statistics and heartbeat of a community; for entertainment rather than for editorials or incisive political commentary.

To succeed, a student newspaper generally must appeal to an almost campus-wide audience, and to do so it must reflect with a considerable degree of accuracy the varied activities and opinions on the campus.

It should be emphasized, however, that in stressing the community-newspaper concept this report is not proposing that a campus publication be a mere bulletin board.

In addition to fulfilling the all-important bulletin-board function of a community newspaper, the campus paper should follow the vigorous traditions of the American press and seek out wrong-doing and duplicity.

This report is suggesting that a campus newspaper can best serve its primary student constituency by doing three things well:

First, keeping students informed of the routine but important matters on the campus, such as chronicling forthcoming campus events and listing changes in the scheduling of classes.

Second, reporting as fairly as possible the campus news events.

And third, pursuing important news events to make sure they are reported, and commented upon on the editorial pages, with comprehension and full understanding of the facts.

The Status of Student Newspapers During the 1960's

Nearly all of the 1200 campus newspapers were under some sort of administrative control in the 1960's, and most still are today despite the marked trend toward independence that in all likelihood will be greatly accelerated during the 1970's.

On most campuses during the 1960's the student newspaper was financed wholly or in part with student-activity fees or with direct appropriations from college or university funds. These financial ties to the institution meant that the colleges or universities were legally the publishers of the newspapers.

In many instances student-activity fee funds or other college or university monies were funneled to the student newspaper through a publications board or the student governing body, but this did not fundamentally change the relationship between the institution and the newspaper. The strings were still there especially in the minds of legislators, trustees or regents, and the general public.

In addition, the adviser system was still widely used. A faculty member, often from journalism, worked closely with the student editors. Usually the student newspaper offices were on campus, sometimes in the journalism department building. Their use was usually rent-free.

With such financial and physical arrangements, it was not surprising that there were disagreements and confusion over the role of the student newspaper. Was it a student publication? Or in effect an official publication of the college or university? And who was ultimately responsible for what was in the newspapers? The student editors or the administrators?

The administrators often did not clarify the situation. Sometimes they tried to back away from responsibility for the student newspaper while at other times they sought to block the appointment of an editor deemed hostile to the administration's interpretation of the best interests of the institution.

Out of this confusing situation, however, has come a new awareness on the part of both administrators and student editors that the role of the campus press must be clarified and much more carefully delineated than it has been in the past.

The Recent Controversies Over the Student Press

Controversies surrounding the campus press are not new. It is only that some of the issues are different from what they were in earlier years.

During the 1930's, for example, student newspapers were involved in such controversies as compulsory Reserve Officer Training Corps (ROTC) programs on campuses and other anti-military and anti-war activities of the time. Another volatile campus issue of the

1930's and 1940's was the presence of Communist organizations on campuses.

In the 1950's, however, the campus press was unusually quiet, reflecting the general mood of the students of the time. When this quiet was shattered first by the civil-rights movement of the early 1960's and then by student opposition to the war in Vietnam, and the increasing militancy of Third World movements, the changes in the campus press were pronounced, and perhaps seemed to be even greater than they actually were.

But it was not the war in Vietnam or black militancy in the 1960's that caused the most problems for student editors and college and university administrators dealing with the campus press. Rather, it was language and changing students mores, including vigorous advocacy and editorial treatment of the news.

In Pennsylvania, for example, State Rep. Russell J. LaMarca anounced that he would withhold all money for the University of Pittsburgh if any state funds were to be used to finance the "obscenities and vulgarities" that he found in student publications.

"I don't feel like sending $36 million to a university that doesn't know what good taste is," said La Marca, "and doesn't have the guts to inform its students what good taste is."

Not only were state legislators unhappy with the new boldness of language found in campus newspapers; but so were members of boards of regents and boards of trustees, and university presidents, faculty members, alumni, and editors of general-circulation newspapers.

The words which attracted so much prominence when used publicly were, of course, standard Anglo-Saxon that one would venture to guess might be heard in private conversations among even state legislators, regents and trustees, and college and university presidents and faculty members; not to mention newspapermen. But once the words went public, even tough-talking types expressed outrage.

There were other reasons for the troubles encountered by campus newspapers during the mid- and late 1960's, of course. On some campuses, newspapers ran into difficulties because of the outspoken positions they took in opposition to the war in Vietnam. In other cases, notably at San Francisco State College and at Wayne State University in Detroit, black militants tried to take over the newspapers, and in the case of Wayne State they succeeded in doing so. At San Francisco State, a group of blacks beat up the editor of the student paper ostensibly because they were unhappy with the way black news was being reported in the paper.

But four-letter words and other uses of language and visual images remained the principal concern of regents, administrators, faculty members and other critics of the student newspapers.

This objection to evolutionary changes in language is interesting

in itself. In the first place, language is always changing and what is considered in bad taste today is often quite acceptable tomorrow. Secondly, colleges and universities are by their very nature in the forefront of change. To use a favorite sociological phrase, institutions of higher learning are, and ought to be centers where "change agents" may be developed.

In fact, the language used by college newspapers in the 1960's, and which got them into so much trouble, is now rather common in general-circulation magazines and is even being found in some general-circulation daily newspapers.

A Case Study: The University of California

It is generally agreed that the student protest movements of the 1960's grew out of such civil-rights-movement developments as the lunch-counter sit-ins in the South and that the first major manifestation of student protest was the Free Speech Movement in the fall of 1964 at the University of California at Berkeley.

Student-newspaper problems surfaced early at Berkeley, too, as well as at such other California campuses as the University of California at Los Angeles. The support of Berkeley's ***Daily Californian*** for the Free Speech Movement was solid, as it usually was for other issues pressed by student groups on the campus ranging from the concept of a department of ethnic, or Third World, studies to the establishment of a People's Park on land owned by the university.

All of these incidents unquestionably had a cumulative effect on the regents and on the university administrators, but the issue that led to action by the regents was the question of obscenities.

After UCLA's ***Daily Bruin*** published a picture considered to be highly obscene by many, John Canaday, a member of the Board of Regents of the University of California, led a movement among the regents for an investigation of the university's eight campus newspapers.

"Campus publications," declared Canaday, "abound in obscene editorial and pictorial content and evidence little or no dedication to truthful and objective reporting."

In calling for a study of the university's student newspapers, Canaday went on to say: "Such an investigation should include a study of the advisability of divorcing such publications from compulsory student support and should consider effective methods of university supervision, such as an editorial policy and review board, or placing campus publications under the jurisdiction of schools of journalism or other appropriate academic departments."

The Regents authorized the establishment of a Special Commission on the Student Press, and Charles J. Hitch, President of the

University of California, appointed four members to the commission.

They were Norman E. Isaacs, then executive editor of the ***Louisville Courier-Journal and Times,*** a former president of the American Society of Newspaper Editors, and now professor at the Columbia Graduate School of Journalism; William B. Arthur, editor of the now defunct ***Look*** magazine and a former president of the professional journalism society Sigma Delta Chi; Edward W. Barrett, Director of the Communications Institute of the Academy for Educational Development and a former dean of the Columbia Graduate School of journalism; and Thomas Winship, editor of the **Boston Globe.**

In its charge to the commission, the regents said:

"This commission is respectfully asked to assess the nature, role, and quality of student newspapers at the University of California's campuses and ascertain their degree of effectiveness in meeting student needs. We would hope the study would include, but not be limited to, an appraisal of news and editorial content, quality of writing and reporting, and concepts of editorial policy. Consideration should be given to the fact that many student editors and reporters are not formally trained in basic journalism. The concept of a student newspaper should be explored: is it a training ground, a semiprofessional operation, or other type of enterprise? The possibility or need for a written code of performance should be examined. Attention should be given to the question of student support, with regard to financial viability, possible alternate means of financing, guarantees of freedom of the press, and other factors. The constitution of the Associated Students at each campus should be reviewed to determine the framework within which each paper functions. The committee should also consider various means of supervision by the university."

After eight months of study the commission came up with eight rather generalized recommendations, and with an important caveat: ". . . there is no ideal 'solution' for the problems of the campus press."

"Across the country," the commission said, "there are abundant examples of student newspapers that have led the way in exposing evils and achieving improvements on campus and in communities. There are also plentiful examples of ineptness, unfairness, and other excesses. The one is the price of the other – just as in journalism at large.

"In general and with occasional exceptions," the commission continued, "the most effective, constructive, and responsible student newspapers across the country have been those with a strong tradition of independence and editorial freedom. The process, however, inevitably involves tensions and give and take."

The Commission's eight specific recommendations were:

1. Everyone concerned – regents, administrator and campus

newspaper staffs – should make it clear that campus newspapers are not "official" organs of the university, and this fact should be stressed with a standing statement in the masthead of each campus paper.

2. "Responsibility, service to student bodies, and self-esteem of newspaper staffs generally result from fiscal independence," but where financing through student fees appears to be the only way to fund a newspaper, such funding should be through contractual agreements "with insulation from both the pressures of campus politics and of administrations."

3. "The principal newspaper of a community or a campus has an obligation to report accurately and fairly," and there should be journalism seminars for staffs, stipends and other methods available including the use of an experienced professional as an adviser to make sure that the papers are not overwhelmed by ineptitude and inexperience.

4. The university should use a news letter or other means to circulate official statements.

5. Every fall a professional seminar should be held for student editors and skilled newspaper experts should be brought in to discuss reportorial, editing and other journalistic techniques.

6. Journalism departments should be ready to provide practical advice to student papers whenever the papers want it, but the departments should not try to be informal guardians over the staffs.

7. Although the commission was asked to consider the problems of obscenities in the campus press, it merely said that it did not consider "the problem of offensive language as it has existed in the University of California's student newspapers the major issue" and that "gutter language merely displays slovenly manners."

8. "The commission overall is recommending a course of patience and understanding; of offering student editors counsel and training; of opening doors, rather than closing them, and, on the part of student staffs, of a search for fiscal responsibility as well as news and editorial responsibility; of a welcoming of publication board responsibility, thus protecting student newspapers from precensorship; and of a genuine search for the skills and good faith that leads to sound reporting, which is the underpinning of all courageous editorial commentary."

In May, 1971 on the Berkeley campus of the University of California, the student newspaper, ***The Daily Californian,*** committed itself to independence by the beginning of the 1971 Fall quarter.

The Regents of the University of California, who constitute a California corporation, entered into an agreement with the Independent Berkeley Student Publishing Cooperative Inc. to allow it to use the name ***The Daily Californian*** and agreed to pay the student group $20,000 in three installments during the first year of its operations for 2500 copies of the newspaper to be supplied to the

faculty and staff of the Berkeley campus. The licensing agreement and the articles of incorporation are printed in full in the Appendix.

The board of directors of the student publishing group is made up of five members. Three of the directors must be working on the newspaper and must be students. Two others must not be students. All five are elected by the persons working on the paper, three-fourths of whom must be students.

During the first year of the independent operation of the ***Daily Californian,*** the three student members of the board were the Editor in Chief of the paper, the Editor of the Editorial Page and the Business Manager. The Editor in Chief was also President of the student publishing corporation. One of the non-student members was a lawyer who had helped set up the new independent corporation and the other was a professor of journalism at the University of California.

Now housed in second-floor offices at Telegraph Avenue and Channing Way a few blocks from the campus, the ***Daily Californian*** operated during its first year on a tight budget of $241,200. All but $25,500 of the budget came from advertising. The non-advertising revenue was made up of the $20,000 from the university for papers for faculty and staff; $5,000 from single paid subscriptions and $3,700 from miscellaneous sources.

The biggest costs were for typesetting and printing. The newspaper bought a modern typesetting machine for $30,000, but still contracts out for the printing of the paper. Typesetting costs were $50,000 and printing costs $95,000. A total of 25,000 papers are printed five days a week except during examination and vacation periods. During the summer the paper is issued twice a week, and only about half as many copies are printed.

The ***Daily Californian*** is a tabloid newspaper ranging in size from eight to 44 pages, depending on the amount of advertising. An average issue is 16 pages, and generally in each issue there are eight non-advertising pages available for news and features.

On the news and editorial staffs about 35 persons receive salaries ranging from $45 to $95 a month. The advertising staff numbers about 15, two or three of whom receive salaries, but most of whom get commissions on the advertising they sell. The 13 percent commissions received by the ad salesmen amount to from $25 to $400 a month, depending on the amount of time spent by a salesman in selling advertisements.

The first year of experience with an independent ***Daily Californian*** indicates that it is quite possible for a newspaper that has depended on student activity fees for part of its income to make it on its own. In the case of the ***Daily Californian,*** funds from the student activity fees had accounted for less than 20 per cent of the paper's total budget. (At other University of California campuses the student-activity fee subsidy has been around one-third of the total

cost of publishing the student newspaper, with the exception of the Irvine campus where the subsidy accounted for two-thirds of the budget.)

Budget for the Daily Californian: 1971–72

Estimated Income:	
Local Advertising	$160,000
National Advertising	45,000
Classified Advertising	25,000
Single Subscriptions	5,000
Bulk Subscriptions	20,000
Miscellaneous Income	500
Total Estimated Income	$255,500
Estimated Expenses:	
Accountants	$12,500
Receptionist	5,200
Student Payroll	20,500
Rent	15,500
Utilities	300
Telephone Service	4,500
Payroll Taxes and Licenses	5,300
Insurance	1,300
Office and Operating Supplies	4,600
Mailing	3,350
Auditing and Legal Fees	500
Printing	95,000
Composition	50,000
Photography	1,200
Travel	250
Associated Press Service	1,100
Solicitors' Commissions	19,000
Refreshments	50
Moving Expenses	300
Incorporation Fees	150
Miscellaneous Expenses	600
Total Expenses	$241,200

Another Example: The Stanford Daily

In 1973 the ***Stanford Daily*** began to take the first steps toward independence after many years of discussion and after making an exhaustive study of the problems of becoming independent.

Like so many other student newspapers, the ***Stanford Daily*** depended on student fees and university funds for an important part

of its support. The ***Stanford Daily's*** annual income in 1971-72 was $191,500; of this, $130,000 came from advertising revenues, $44,000 from student fees; and $17,500 from the university to cover the cost of newspapers for faculty and staff members.

The publisher of the newspaper had been the Associated Students of Stanford University (ASSU), the student governing body. There also had been a publications board, which in recent years was active only on an intermittent basis. Student-activity fee money allotted to the paper amounted to $4 a year per student and was approved in a student referendum each spring.

Under its program for complete independence from the university, the ***Stanford Daily*** will receive $22,000 in the 1972-73 school year from student fees, or $2 a student instead of the $4 it had gotten, and will continue to get $17,500 to cover the cost of papers for faculty and staff. In its second year of independence, the ***Stanford Daily*** will get only $11,000 in student fees, or $1 per student, plus $17,500 for papers for faculty and staff. In the third year there will be no student fee money, but the paper will receive $17,500 in university funds for the cost of furnishing newspapers for faculty and staff. At the beginning of the fourth year the newspaper will receive no subsidy from the University, except in the form of office space at a nominal rental. (Stanford has a special situation in regard to the ***Stanford Daily's*** office because it is in a structure built with funds given to the university expressly for the construction of a building to house student publications.)

Stanford University has entered into a licensing agreement with the corporation publishing the student newspaper so that it can continue to use the name ***Stanford Daily.*** The agreement is similar to the one at the University of California at Berkeley.

The corporation's board of directors is made up of student editors, the business manager of the paper, a lawyer and professional journalists, but students are in a majority.

On the ***Stanford Daily,*** as at Berkeley, the principal editors and business manager are selected by vote of the students working on the paper. Also as at Berkeley, safeguards are built into the definition of a staff member of the newspaper so that candidates for an editor's job or for business manager cannot stuff the ballot box with last-minute votes from "ringers."

To help make up the loss of almost a third of its revenues that will result from the full withdrawal of student fee funds and university money, the ***Stanford Daily*** is exploring the development of such projects as the printing of programs for football games, the publication of pre-registration issues which would be mailed to students in the summer and presumably would attract a lot of advertising, and the printing of course guides. All of these could be potentially profitable, but to get such business a student newspaper must be competitive with commercial printing companies, unless, of

course, a college or university would give the business to the student publication to help keep it solvent.

As profitable as such ventures could be, a word of caution should be entered about them. The danger always exists that a newspaper's staff will become so engrossed in projects peripheral to the publication of a daily paper that the projects become more important than the newspaper itself. At both Stanford and Berkeley, for example, the student newspapers have expensive typesetting equipment that the editors and business managers are anxious to keep busy 24 hours a day.

How the University of Oregon Did It

At the University of Oregon the newly independent ***Daily Emerald*** is published by the Oregon Daily Emerald Publishing Co. Inc., an incorporated, non-profit body. The company's board of directors includes the editor of the ***Emerald,*** the newspaper's business manager, a member of the news staff elected by the staff, three students not connected with the paper and three faculty members. The latter three students are appointed to the board by the university's student-body president. The university president appoints the three faculty members to the board. The other members of the board, however, can reject any of the appointments by the student-body president or the university president. The board selects the editor and business manager for the newspaper.

The ***Daily Emerald's*** budgeted income is as follows for a typical year:

Local advertising	$80,000
National advertising	15,000
Classified advertising	10,000
Bulk-rate student subscriptions	26,000
Bulk-rate faculty and staff subscriptions	7,500
Individual subscriptions	915
Photo income	750
Art work income	100
Coupon book (published by Board, not by newspaper)	6,000
Total income	$146,265

Thus, more than two-thirds of the paper's income is from advertising. Almost all of the rest of the income comes from the bulk-rate subscriptions for students, faculty and staff. These subscription prices are negotiated each year and are part of an annual contract between the newspaper's publishing company and the student governing body and the university.

For all university services received, principally office space, the newspaper pays the university.

The ***Daily Emerald's*** experience provides a good example of how it is possible to use student-activity and university funds for the purchase of copies of a newspaper published by an independent corporation.

The University of Florida's Experience

A 15-month-old disagreement between Stephen O'Connell, president of the University of Florida, and the editors of the ***Florida Alligator*** culminated early in 1973 with the president cutting off funding for the paper immediately and ordering it off campus by September, 1973.

The University of Florida dispute was typical of many involving the campus press in recent years.

In the fall of 1971 the newspaper published a list of abortion referral services in violation of a 103-year-old state law, and after O'Connell had ordered the paper not to publish the list.

Although Ron Sachs, the editor of the paper at the time, was acquitted when the state law was found unconstitutional, O'Connell continued to pursue the question of the independence of the paper's editors.

In the fall of 1972, O'Connell proposed to the University of Florida's Board of Regents that the student paper be converted into a university newspaper and that it be operated by an assistant dean of students directly responsible to the president.

The board of regents rejected O'Connell's proposal and told the president to resolve the question of the future of the newspaper.

In January, 1973, O'Connell announced that no further funds from student activity fees would be available to the paper and it would have to find its own quarters off-campus by September.

"The university will continue to encourage the success, not the failure, of the new undertaking," O'Connell said, adding: "I remain convinced that with good management and a willingness to publish news of interest to the university community in a manner consistent with good journalistic standards, the publication can succeed."

But Randy Bellows, the editor of the ***Alligator*** in 1973, said: "President O'Connell has never been a friend of the free press. From the beginning, he has attempted to dream up new and better ways to sacrifice this newspaper, the ***Alligator,*** for a rosy and untroubled image of this university. They grant the ***Alligator*** independence, but in reality President O'Connell, like university presidents throughout the nation, is attempting to create the most fragile and financially insecure paper he can. Perhaps then, should the ***Alligator*** die for lack of oxygen, he can say he tried while he goes about setting up his own campus communicator."

By losing its annual $94,000 subsidy from student activity fees, the ***Alligator*** faced the need of finding money elsewhere to make up for a fourth of its $360,000-a-year budget or drastically reducing its expenses. Nearly all of its income comes from advertising.

Other newspapers, notably the ***Daily Californian,*** became independent on a few months' notice, but the experience is not without many difficulties, even when independence comes gradually and with adequate forewarning.

The Columbia Spectator's Troubles

The ***Columbia Daily Spectator,*** the student newspaper at Columbia University, ran into serious difficulties in December, 1972, shortly after it began its second year as a completely independent publication.

The ***Spectator*** sought a $25,000 loan from Columbia University to pay for a modern typesetting machine that the newspaper's editors felt was essential to the publication's survival.

At first the University said it would grant the loan only if the ***Spectator*** first repaid $16,000 owed the university in unpaid telephone bills, but the newspaper had no funds available to pay any debts.

A compromise was finally worked out under which Columbia agreed to lend the ***Spectator*** $25,000 to be repaid over five years. Interest would be $1,000 a year payable in free printing to be furnished the university by the paper. The telephone bill was to be paid in January, 1973.

The ***Spectator*** wanted the new typesetting equipment not only because the equipment could be used in commercial typesetting work that would yield the newspaper at least $10,000 a year in profits but also because it would save the paper money in its own production costs.

The 96-year-old ***Spectator*** has been published by an independent corporation since 1961, but between 1964 and 1969 it received an annual subsidy of $20,000 from the university. This was reduced to $10,000 in 1970 and cut off altogether in 1971.

The university balked at aiding the ***Spectator*** not only because of the paper's outstanding $16,000 telephone debt but also because of the university's own precarious financial position. Its operating deficit over recent years has totaled $70 million.

Most universities are in difficult financial straits, and the experience at Columbia is hardly unique, both from the university's standpoint as well as from that of the student paper. The ***Spectator*** is not the only newly-independent paper that is likely to have problems in the coming years.

The University of Maryland's Approach

When even as well-established a paper as the ***Columbia Spectator*** has financial problems after it has attained complete independence from university or student activity fee funds, it is obvious that less well-established publications will have problems if they seek to become completely independent too quickly.

The University of Maryland's experience is therefore pertinent to colleges and universities throughout the country where newspapers are often not firmly established and where potential advertising revenues do not appear to be large enough to finance a student paper.

In 1970 the Board of Regents of the University of Maryland approved a resolution favoring "the incorporation of student publications so that the University would no longer be the publisher" and requiring that "a study of the ways of implementing the proposed separation to be undertaken by a representative commission to be appointed by the board."

At the time of the Regents' action student publications were supervised in a very general way by a publications board including faculty and student members. Thirty to 40 per cent of the cost of the daily student newspaper – the ***Diamondback*** – was financed with funds from student activity fees which all students were required to pay and which were collected by the university. Legally, the university was publisher of the ***Diamondback***. (Note: Although the Maryland study concerned all student publications and all campuses of the university, this discussion is being limited to the problems of the student paper at the principal campus at College Park, for reasons of simplicity and because this report is concerned only with student papers.)

The Regents acted after a student magazine called the ***Argus*** published a picture on its cover of students burning an American flag, sponsored a National Creative Pornography Contest and ran a picture of a pig on which was superimposed in strategic locations names of university and state officials.

The nine-man Regents' commission on student publications was headed by Charles Schultze, professor of economics at the university and a former director of the U.S. Bureau of the Budget, and included two journalists, four persons with experience in the management of newspapers, the head of the journalism department at Maryland and a dean of student affairs.

The commission examined the state of student publications, consulted widely with persons on the campus and with off-campus sources familiar with student, journalistic and publishing problems, and submitted its report to the regents in 1971.

The commission recommended that an independent, non-profit private corporation be formed to become the legal publisher of student publications financed in part or totally by student activity fees

and that the corporation's board include journalists and persons familiar with publishing procedures as well as students and faculty members.

The commission also recommended that the Student Government Association, which at Maryland is charged with disbursing student activity fees, turn over to the publications corporation a lump sum payment each fall over which the corporation would have final authority but which would represent the result of negotiations between the corporation and the student governing group concerning the needs of the publications in the context of the needs of other student groups sharing in student activity fees.

As a result of the commission's recommendations, Maryland Media Inc. was established on the College Park campus in 1971 as publisher of the ***Diamondback*** as well as ***Argus Dimension,*** a weekly magazine distributed as part of the newspaper; ***Calvert*** a literary magazine published three times a year; ***Terrapin,*** the yearbook; and ***Black Explosion,*** a bi-weekly newspaper published by the Black Students Union.

The eleven-member board of directors of Maryland Media includes two faculty members, one of whom is from the School of Journalism; three student editors; the vice president of the student government group; a student who represents neither a publication nor the student governing body; and four professional journalists.

The board fills its own vacancies as they occur and chooses the editors of the student publications. The board also employs a business manager for the publications, and he divides his time about equally between handling financial matters for the publications and helping sell advertising for the ***Diamondback,*** which with its $214,000 budget constitutes 90 per cent of the cost of all student publications.

The paper estimated that in the 1972-73 school year it could cover $167,000 of its costs through the sale of advertising and from miscellaneous income and would need nearly $47,000 from student activity fee funds. Twenty thousand copies of the ***Diamondback*** are printed every day and placed in distribution areas throughout the campus. Maryland's College Park campus has 35,000 full-time students, many of whom are commuters. The 20,000 press run seems to be ample to meet campus needs. Typesetting, printing and distribution are done under contract by a private publishing company.

Although the paper sought $47,000 in student activity funds, the Student Governing Association allocated it only $16,000. In addition, the association gave Maryland Media $5,000 for general operating costs, and most of this money is used for the ***Diamondback*** because its operations amount to 90 per cent of all student-financed publications costs.

Mid-way through the 1972-73 school year the ***Diamondback*** was still hoping to have enough income to meet its budget, despite the

large reduction by the student governing group in the paper's request for student activity fee funds, a reduction resulting largely from heavy demands for money by other student organizations.

The paper's advertising income has been greater than anticipated, and costs have been reduced largely by cutting back paid personnel in the business office and decreasing commissions paid to advertising salesmen.

In addition to receiving $16,000 from student activity fees, the ***Diamondback*** also occupies space rent-free in the Journalism Building. It is difficult to estimate the value of such space but it would certainly be several thousand dollars a year. And the university is planning to allocate larger quarters to the paper when a new building is completed in the near future.

Now in its second year under the aegis of Maryland Media, the ***Diamondback*** appears to be doing very well. Always an award-winning paper, it runs to eight full-size pages most days and is generally recognized by faculty and students alike as a responsible publication.

Where the paper once depended on student activity fee funds for 40 per cent of its income, it is able to operate now with a budget only 10 per cent of which comes from activity fees.

The Maryland experience probably would be a good solution on many campuses. The student paper, which publishes a notice every day declaring that it is in no way an official voice of the university, has an adequate degree of independence as well as assurance of financial stability through its access to student activity fee funds.

Through the Maryland Media corporation the paper is fairly well isolated from pressures from either the student government or the university administration.

In addition, the experience in the fall of 1972 when the student governing group gave the paper only about a third of the money it sought from activity fee funds indicates that the paper cannot automatically depend on such funds for whatever amount of money it feels it needs. And the paper's ability to sell more advertising than it thought it could also indicates that it can spur itself on to do greater things financially if it is forced to do so.

To make certain that faculty and staff members get information about the university which the administration feels they need, the Office of University Relations publishes weekly an eight-page tabloid paper called ***Precis*** which includes all manner of material on what is happening on campus.

An alternative to a university-sponsored publication for faculty and staff would be for the university to purchase space in the ***Diamondback*** to publish such information, but this approach was rejected by the Regents' commission on student publications because "it would imply too great a distinction between the student publications and the university community as a whole."

A Pattern for Many Schools

At such other schools as Purdue University, the University of Illinois, the University of Kentucky, Florida State University and the University of Arkansas, arrangements similar to the Maryland plan have been worked out for the publication of student papers.

If total independence does not seem practical, a strong degree of independence certainly would appear to be the answer to student paper problems. And the best way to work out such problems would seem to be through the commission approach followed by both Maryland and California. For if the courts get into the situation, as they have in some instances, the solution is not likely to be satisfactory to anyone.

In a recent federal court ruling in North Carolina, for example, a judge held that the president of North Carolina Central University, a predominantly black institution, could neither censor the campus's student newspaper nor support it financially. As a result of the decision, the university no longer has a student paper because adequate private financing is not available.

The case arose when the president of the institution withheld university funds from the paper after charging that its black editors were discriminating against whites. The president felt that university support of the paper might jeopardize federal funds received by the university on condition that it did not follow discriminatory practices.

Other court cases in recent years have held that the president of a state university could not expel a student editor for criticizing the state government and that a college administration could not prevent the publication of a controversial article in a student paper published on the campus of a state-supported institution.

Although some colleges and universities have expressed a fear that editorial expressions in a student paper could jeopardize their tax-exempt status, the Internal Revenue Service has held that such expressions of editorial opinion do not constitute attempts to influence legislation or participation in political campaigns and thus do not affect tax-exempt status.

Some Conclusions

An independent student newspaper is obviously the best answer to the problems of the student press. As indicated in much of the discussion above, an independent paper serves both students and administration best just as an independent newspaper of general circulation serves its community the best.

For the administration of a college or university, an independent newspaper clearly separates the views of the student publication from the administration of the institution.

For students, an independent paper can carry on in the best traditions of open inquiry of the free American press. In addition, an independent newspaper means reliance on the marketplace for its viability.

But, as this report has indicated, it is not easy to turn a long-subsidized newspaper into an independent, financially solvent publication.

To turn a subsidized newspaper into an independent operation, a college or university should enter into a licensing agreement with a student-controlled corporation set up expressly to publish a student newspaper. The license should be for a fixed period of, say, five or ten years, but should also contain a provision allowing the institution to revoke the license for due cause. Such a provision should provide some guarantee to the college or university that the student newspaper will pursue the stated goals of its corporate charter.

The agreement between the institution and the student-newspaper corporation should provide for the establishment of a corporate board of directors that would have a majority made up of students who are editors and business-side officers of the paper. But the board of directors should also include a lawyer and a journalist as well as a representative or two from the larger campus community.

Provisions in the agreement should make certain that the newspaper is in fact controlled by students to prevent it from being taken over by former students or hangers-on in the campus community. The agreement should provide that at least 75 per cent of the newspaper's staff, or perhaps 85 per cent, be full-time students. It also should provide that only full-time staff members should be allowed to vote for the editors and business managers of the paper, and that the definition of a full-time staff member be clear-cut and based on actual work performed for the newspaper, either in terms of hours worked or news articles and advertisements produced for the publication.

The break from a direct institutional subsidy or from reliance on student-activity fee funds should be made cleanly and quickly. The break should be put on a gradual basis only if that is the one feasible way to get an independent publication established. A transitional stage could take from one to two years.

If it is determined on the basis of a realistic study that the newspaper can become independent only over a period of years, the plans for such a transitional period should be carefully drawn so that full independence can be established at a time certain.

The most effective method for a gradual movement toward independence is to cut back the allocation of funds from student-activity fees over a period of probably no more than three years, unless there are especially extenuating circumstances.

Careful consideration should also be given to selling copies of the

independent campus newspaper rather than continuing the custom of giving the papers away on campus stands. Sales on a per-copy or subscription basis unquestionably will mean a considerably smaller circulation, but by facing the test of the marketplace every day the student editors will usually be forced to turn out a far better paper than if their product relies solely on advertising and is given away daily.

Admittedly, the transition period from a give-away paper where free distribution was made possible by student-activity fee money to a paper that must be purchased will be a difficult time, but it must be remembered that a fourth or more of the students on a campus leave each year and that it will take only three or four years before no one on campus except staff and faculty would still recall the good old days when the paper was distributed free.

But if the student editors feel that their paper can make it on the basis of advertising income alone, there is no reason why they should not try it.

Independence makes for more responsible journalism. Once a paper is independent, the student editor no longer has to feel the need to flex his editorial muscles by taking on the administration just to show his student readers that the president does not run him. The very fact of independence almost always instills more responsibility in any person, particularly a student editor.

But what about the college or university where an independent student newspaper simply does not seem to be economically feasible? If it is genuinely felt on a campus that a student newspaper cannot make it on its own, then the student editors should contract with the institution for a direct subsidy or with the student governing body for a portion of the student-activity fees. The money should be paid directly to a corporation set up to run the student newspaper. The corporation should be established and run along the lines of the one outlined above for an independent operation.

If institutional or student-activity funds must be used to assure the publication of a student newspaper, great care should be taken to make certain that everyone concerned understands the arrangement. The corporation established to run the newspaper should have complete charge of the newspaper; the editors selected by the corporation's board of directors should have the same freedoms, and take on the same responsibilities, as the editors of any other newspaper.

Ambiguities of course will remain in such a situation. College or university funds will still be used to help finance the newspaper, and the institution may in some cases be considered the publisher of the newspaper. For these reasons an institution should look very carefully at a situation where student editors or administrators maintain that a completely independent newspaper is not financially feasible.

Once a student newspaper is established as completely independent, the college or university should consider the possibility of publishing a house organ to serve primarily as a channel of communications with faculty and staff, as well as interested students. Many colleges and universities have established such publications in recent years, and most of them present straightforward accounts of administrative and other happenings on the campus. Such newspapers can be produced cheaply and can be extremely useful in disseminating information about the university.

The college or university can also purchase advertising space in the student newspaper. Indeed, a section can be placed in the agreement setting up the independent publication providing for the sale of advertising space to the institution on the same basis space is sold to anyone else.

A college or university is supposed to be dedicated to the concepts of freedom, and this surely should include freedom of the press. With such freedom comes, of course, irresponsibility as well as responsibility.

As the Regents' Commission on Student Publications at the University of Maryland noted in its report:

"While we believe that the various student publications can be made independent, and published under the responsibility of an independent publisher, they will, and indeed must, remain a part of the university community. They are student-edited. They provide very important services to that community, services of an educational, informational and literary nature. Imaginatively and responsibly conducted, they can help weld the diverse elements of a large university into a cohesive force. It is for this reason that we have recognized the need and justification for a financial subsidy to those publications which, after a good faith effort, cannot cover legitimate expenses with revenues."

A final word of caution: The creation of independent legal status can remove most, if not all, of the contradiction inherent in the current peculiar status of the university administration serving as publisher without publisher's powers, but it cannot solve the problems which will occur if the boards of directors consistently fail to exercise their powers responsibly. This is not to downgrade what we believe to be the important goal our recommendations can accomplish. It is merely to recognize the inescapable fact that student publications, precisely because they ***are*** student publications, can be separated from the university administration, but not from the university.

To help make certain that the student newspaper is adhering to the highest possible journalistic standards and is doing a responsible job of reporting and interpreting campus news, a Campus Press Council might be established.

Press Councils have been under active consideration in the United

States for several years and have been tried experimentally in some places, and plans for a National Press Council were announced early in 1973. In Minnesota, a statewide press council went into operation in the fall of 1971. In Britain, a Press Council has been active for some time.

Local press councils generally have been designed to reflect all aspects of life in a community and have been made up of a wide range of persons in a community. Meeting periodically with the editors of a community newspaper, the members of the Council take up individual complaints against the newspaper and seek to understand the publication's problems in general.

The Press Council has no authority to require a newspaper to do anything, but its discussion sessions often lead to a better community understanding of the publications and the development of a more responsible newspaper.

But a word of caution about Press Councils: They are a new and relatively experimental concept in the United States and it is debatable whether campuses should be sites for Press Council experiments when there are still so many unknowns about them and when student publications create so many special problems themselves.

But whatever problems may come with independence, they are always going to be outweighed by its advantages.

An independent newspaper has to have the confidence and support of the students who read it. This fact in itself leads to greater professionalism in reporting and editing as well as in the general conduct of the newspaper.

Looking at a student newspaper strictly from a dollars-and-cents standpoint, an independent publication will be more efficiently operated because it must be to survive.

And as far as the laboratory or training aspect of a student newspaper is concerned, it will be a better place to learn about newspapering because it will be more professional from its news room to its business office. Just to take one example, an independent publication is much more concerned about problems of libel than is a publication secure behind the shield of a large institution like a college or a university.

Finally, there is the question of credibility. Students will find an independent publication a far more credible source of information about the campus than a newspaper tied to the institution.

Of course an independent newspaper will have both its good and bad days, but who doesn't?

Appendix I

University of California Agreement

THIS AGREEMENT, made and entered into as of the 5 day of OCTOBER, 1971, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, hereinafter called "Licensor," and THE INDEPENDENT BERKELEY STUDENT PUBLISHING COOPERATIVE, Inc. a California nonprofit corporation, hereinafter called "Licensee":

WITNESSETH:

WHEREAS, Licensee desires to publish a daily newspaper under the name and style of "The Daily Californian" and published primarily to be read by the students and employees of the Berkeley Campus of the University of California,

WHEREAS, Licensee wishes to use the name "The Daily Californian" as the title of its publication,

WHEREAS, Licensee wishes to sell to Licensor subscriptions to its publication, and

WHEREAS, Licensor, among others, claims the name "The Daily Californian" as its own property,

NOW, THEREFORE, the parties hereto agree as follows:

1. Licensee heretofore filed Articles of Incorporation with the Secretary of State of the State of California as a nonprofit corporation of the State of California, said Articles of Incorporation being attached hereto as Exhibit "A." Licensee agrees that said Articles of Incorporation insofar as they relate to membership in Licensee, the name of the corporation, the composition thereof, the officers of Licensee or the qualifications therefor shall not be amended or modified in any manner, shape or form from the manner in which they appear in said Exhibit "A" without the prior written permission of Licensor, such permission not to be unreasonably withheld.

2. Licensor hereby grants to Licensee for the term of this agreement an exclusive license to any and all rights of Licensor to use the name "The Daily Californian" as the name of a daily publication which is to be directed primarily but not exclusively to the students and employees of the Berkeley Campus of the University of California, which publication will include the publication of paid advertisements. Licensee agrees to publish advertisements submitted for publication by Licensor at rates no higher than those charged by Licensee to others for advertising in said daily publication provided such advertisements are in accordance with the standards and policies established by licensee and governing the publication of advertisements in said daily publication.

3. Licensee shall not by use or otherwise obtain any proprietary or other interest owned by Licensor in the name "The Daily Californian" except the right to use such name as provided in this agreement, to wit: to publish a daily newspaper primarily for the use of students and employees of the University of California, Berkeley. Licensee shall not use the name "The Daily Californian" as its corporate title or as any part of its corporate title.

4. Licensee agrees to indemnify and hold harmless and release and forever discharge The Regents of the University of California or its officers, employees or agents by reason of any acts, illness or injury to or defamation of any person or loss or damage to property or any other consequences arising

directly or indirectly from the exercise of the license herein provided occurring during the term of this agreement or at any time subsequent thereto.

5. On or before the 15 day of OCTOBER 1971, Licensee shall furnish Licensor with a certificate of liability insurance with a carrier and in a form satisfactory to Licensor naming The Regents of the University of California as an additional insured with the following limits of coverage: Comprehensive general liability insurance for bodily injury and property damage and personal injury, including but not limited to damage arising from humiliation, invasion of privacy, libel, slander and defamation of character. Coverage for bodily injury and personal injury shall be in the amounts of Two Hundred Fifty Thousand Dolalrs ($250,000.00) each person and Five Hundred Thousand Dollars ($500,000.00) each occurrence. Coverage for property damage shall be in the amount of One Hundred Thousand Dollars ($100,000.00). In addition, prior to said date, Licensee shall furnish Licensor with evidence of unlimited compensation insurance under a policy covering its full liability under the Workmen's Compensation Insurance and Safety Act of the State of California and any acts amendatory thereof or supplementary thereto. All such policies shall provide for not less than Thirty (30) days' advance written notice to Licensor of cancellation or termination of such policies.

6. No assignment of this agreement or any right accruing under this agreement shall be made in whole or in part by Licensee without the express, written consent of Licensor first had and received.

7. Each issue of the publication of Licensee shall bear upon its masthead the following inscription:

> "This publication is not an official publication of the University of California, but is published by an independent corporation using the name of the publication as 'The Daily Californian' pursuant to a license granted by The Regents of the University of California."

8. During the 1971-1972 academic year of the Berkeley Campus of the University of California, as defined in the academic calendar of the Berkeley Campus of the University of California, Licensor agrees to purchase from Licensee Two Thousand Five Hundred (2,500) subscriptions to "The Daily Californian" for a total price of Twenty Thousand Dollars ($20,000.00), payable in installments of $6,666.67, $6,666,67 and $6,666,66 respectively, to be paid on the first day of the Fall, Winter and Spring Quarters of said 1971-1972 academic year. Licensee shall distribute not less than Two Thousand Five Hundred (2,500) copies of "The Daily Californian" on each publication day of the 1971-1972 academic year at such places as Licensor shall direct, not to exceed One Hundred Twenty (120), and in the amounts at each place as specified by Licensor. Licensee shall publish "The Daily Californian" not less than Forty-Three (43) days each Quarter of the 1971-1972 academic year.

9. This agreement shall terminate as of June 30, 1981, save and except that either party hereto at any time during the term of this agreement may serve notice in writing upon the other party hereto that it desires to terminate said agreement and said agreement shall terminate One Hundred Eighty (180) days following service of such notice. Anything in this agreement to the contrary notwithstanding either party to this agreement may terminate it upon the giving of thirty (30) days advance notice, in the event the other party breaches any portion thereof.

10. As soon as practical after the audit of the books and records of the

student newspaper previously published under the name "The Daily Californian" has been completed Licensor agrees to transfer and to convey to Licensee a presently undetermined sum of money not to exceed Four Thousand Dollars ($4,000) and not to be less than One Hundred dollars ($100.00) held by Licensor and which constitutes an amount of income above expenses realized by a preexisting student newspaper known as "The Daily Californian" operated under the auspices of Licensor prior to the formation of Licensee, said sum to be used for preparation costs incident to the publication covered by this agreement.

11. Licensor agrees that for the period of this agreement it shall not establish (directly or indirectly under its auspices), sponsor, support (financially or otherwise), endorse or subscribe to any other newspaper published primarily for and by students and employees of the Berkeley Campus of the University of California save and except that Licensor may continue to publish and distribute publications such as "Campus Reports," "U.C. News Clip Sheet," the "University Bulletin," departmental publications and documents similar to the aforementioned publications.

12. All notices authorized or required to be served by the provisions of this contract shall be deemed served when deposited in the United States mail, postage prepaid, and, if to be served on Licensee, mailed to Licensee at 2480 Channing Way Berkeley, California and, if to be served on Licensor, mailed to the Office of the Chancellor, 200 California Hall, University of California, Berkeley, California.

13. This agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. The parties hereby acknowledge that any statement or representations that may have heretofore been made by them to each other concerning the subject matter of this agreement are void and of no effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

Appendix II

Articles of Incorporation of The Daily Californian (A Nonprofit California Corporation)

KNOW ALL PERSONS BY THESE PRESENTS:

The undersigned do hereby associate themselves together for the purpose of forming a nonprofit corporation, and do hereby certify:

FIRST: The name of this corporation is THE DAILY CALIFORNIAN.

SECOND: This corporation is formed under and pursuant to the General Nonprofit Corporation Law of the State of California (Title 1, Division 2, Part 1 of the California Corporations Code).

THIRD: The specific and primary purposes for which this corporation is formed are:

To publish a newspaper directed primarily, but not exclusively, to the students of the University of California at its Berkeley campus; to publish any other form of written or graphic material deemed appropriate by the officers and directors of this corporation; and to carry on all activities incident to the publication of such newspaper or other publications, including, without limitation, (1) the publication of paid advertisements, (2) the hiring or purchasing of any and all equipment necessary to publish said newspaper or other publications, (3) the hiring of employees to accomplish its purposes, (4) applying for, obtaining, and holding any licenses or permits required to distribute such newspaper or other publications, (5) the distribution of such newspaper or other publications, and (6) the sale of such newspaper or other publications for money or other consideration in an amount or amounts to be determined by the officers and directors of this corporation.

FOURTH: The activities of this corporation shall be limited to the purposes set forth in Article THIRD hereof, and the distribution of all gains, profits, dividends, income and principal shall be confined to said purposes. No part of the net earnings or of the assets of this corporation shall inure to the benefit of any member, private shareholder, or individual. Upon the dissolution or winding up of this corporation, after paying or adequately providing for the payment of all of its debts and liabilities, all of its remaining assets or proceeds of sale thereof shall be transferred to any nonprofit fund, foundation or corporation, which is organized and operated exclusively for educational, scientific or charitable purposes. If this corporation holds any assets in trust, such assets shall be disposed of in such a manner as may be directed by decree of the Superior Court of the County of Alameda, upon petition therefor by the Attorney General or by any person concerned in the liquidation.

FIFTH: This corporation and its directors shall have and may exercise, subject to the provisions of these Articles, all powers now or hereafter conferred upon non-profit corporations by the laws of the State of California.

SIXTH: The principal office for the transaction of the business of this corporation shall be located in the County of Alameda, State of California.

SEVENTH: No person who becomes a member of the corporation, by virtue of such membership, shall be personally liable for the debts, liabilities, or obligation of the corporation.

EIGHTH (A): The number of directors shall be five (5) until such number shall be changed by an amendment to these Articles. Three of the directors shall be members of the corporation, each of whom when elected as such a director shall be a registered student at the University of California at the Berkeley campus. One such director shall be elected by the vote of the

majority of Class A members of the corporation voting thereon with each vote counting equally; one such director shall be elected by the vote of the majority of the Class B members of the corporation voting thereon with each vote counting equally. Two of the directors ashall not be members of the corporation or students at the University of California, and such directors shall be elected by the majority of both classes of the members of the corporation voting thereon with each vote counting equally. Each director shall hold office until the election and qualification of his successor or until his death, resignation or removal.

EIGHTH (B): The names and address of the persons who are to act in the capacity of directors until the selection of their successors are:

Maryellen B. Cattani	2070 Pacific Ave., San Francisco, California
Willoughby C. Johnson	3579 Sacramento St., San Francisco, California
Jack E. Ferguson	166 Woodward, Sausalito, California
E. Thomas Unterman	2518 Fillmore St., San Francisco, California
Carol Olsen	1590 Sacramento St., San Francisco, California

NINTH: There shall be two classes of members of the corporation; Class A members who shall be involved in the work of publishing the newspaper and who shall be elected to membership by the vote of a majority of the Class A members voting thereon, and Class B members who shall be involved in the work of selling advertisements for publication in the newspaper and who shall be elected to membership by the vote of a majority of the Class B members voting thereon. At all times seventy-five percent (75%) of the Class A members and seventy-five percent (75%) of the Class B members shall be currently registered as students at the Berkeley campus of the University of California, and membership in either class of the corporation shall cease upon either a member's ceasing to work on the staff of The Daily Californian or at the expiration of five years from the date on which said member was admitted to membership, whichever event occurs first.

TENTH: The officers of the corporation shall be a President, Vice President, Secretary and Treasurer, and such subordinate officers, including one or more assistant secretaries and assistant treasurers, as the Board of Directors may designate. Only directors shall be qualified to hold the office of President, Vice President or Secretary and Treasurer, but the Board of Directors may appoint any person, whether or not a director of the corporation, to hold any subordinate office.

Both Class A and Class B members shall be entitled to vote for the President and the votes of the members of each class shall count equally. The Class A members shall elect the Vice President, and the Class B members shall elect the Secretary and Treasurer. Cumulative voting is prohibited. Each officer shall hold office until the election and qualification of such person's successor or until such person's death, resignation or removal.

ELEVENTH: These Articles may be amended as provided by law.

IN WITNESS WHEREOF, the undersigned, being the persons who are to act in the capacity of first directors of this corporation, have hereunto subscribed our names to these Articles of Incorporation this 22 day of July, 1971.

Appendix III

Aarons, Leroy, "The Stanford Daily: A Student Newspaper Staff Under Fire," *Washington Post,* May 24, 1971, p. A6.

Chambers, M.M., "Freedom of the College Student Press," Department of Educational Administration, Illinois State University, 1971.

Chance, Jean, "Diary of a Press Council Member," *Quill,* Nov., 1971.

Cunningham, Ben, "Political Bust—or an Obscenity?" *Review of Southern California Journalism,* Spring, 1971, pp.4-5.

Dudley, Bruce, "Control of Small College Student Newspapers," *Journalism Quarterly,* Fall, 1971, pp. 21-22.

Editor & Publisher, "Changes in Campus Newspaper Outlined to Assure Freedom," May 9, 1970, p. 30.

Gibbs, Annette, "The Student Press: Guidelines for College Administrators," *Journal of the National Association of Women Deans and Counselors,* 1971, pp. 159-163.

Greenwood, Noel, "The Daily Cal Leaves Campus. Who's Next?," Quill, Dec., 1971, pp. 14-15.

Hulteng, John L., "What Editors and Journalism Educators Expect from Journalism Education," American Newspaper Publishers Association *News Research Bulletin,* Sept. 16, 1971, pp. 51-76.

Isaacs, Norman E., "The Student Newspaper, Report of the Special Commission on the Student Press to the President of the University of California," American Council on Education, 1970.

Jones, William Hamilton, "To Communicate with Faculty Members, Students, Campus Administrations Develop Their Own Newspapers," *Chronicle of Higher Education,* Feb. 2, 1970.

Kibler, Robert J., "Report of the President's Task Force on Student Publications," Florida State University, Tallahassee, Fla., 1970.

Kneeland, Douglas E., "The Campus Press, 1972—It's Changing Again," *Quill,* March, 1972, pp. 8-12.

Kovach, Bill, "Harvard Crimson, at 100, Draws Its Sons Back," New York Times, Jan. 22, 1973, pp. 33 and 49.

Mencher, Melvin, "Student Journalists Have Constitutional Rights, Too," *Quill,* Oct., 1972, pp. 9-13.

Mencher, Melvin, "Independence (by fiat) for the Campus Press," *Quill,* Mar., 1973, pp. 14-16.

New York Times, "Columbia Spectator Says It Expects to Fold Next Week," Dec. 7, 1972, pp. 53 and 58.

New York Times, "Columbia U. Agrees to a Loan In Move to Save The Spectator," Dec. 17, 1972.

Newsweek, "The New Candor, j.g.," Dec. 25, 1967, pp. 66-67.

Politella, Dario, "Guidelines for the Student Press," *Seminar,* December, 1969, pp. S1-12.

Saalberg, Harvey, "Kent State's Paper in Peril After Political Endorsement," *Editor & Publisher,* Dec. 16, 1972, pp. 9-10.

Sandman, Peter M., "The Legal Rights and Responsibilities of College Student Publications," Pi Delta Epsilon, Pittsburgh, Pa., 1969.

Schultze, Charles L., "Report of Regents' Commission to Advise the Board on How to Separate the Student Publications at the University of Maryland from the University," University of Maryland, 1971.

Shaw, Robert D. Jr., "The Alligator: Free to Bite or Muzzled?" *Miami Herald,* Sept. 10, 1972, pp. 1A and 36A.

Shaw, Robert D. Jr., "U of F Newspaper Loses Funds, Campus Ties," *Miami Herald,* Jan. 10, 1973, p. 28A.

Steven, Jean, "Student Press Revisited," *Freedom of Information Center Report No. 260,* April, 1971.

Stewart, Guy H., and Atkins, Paul A., "J-Schools Work Closely With Commercial Newspapers, Sever Ties With Campus Press," *Journalism Educator,* Fall, 1970, pp. 2-5.

Wanty, Vernon, "What's the Source of News for Community College Students?" *College and University Business,* March, 1969.

The Law and the Campus Press –
Thomas C. Fischer

"[Education should be] civil defense against media fall-out."

Marshall McLuhan,
The Gutenberg Galaxy *

"Those who won our [country's] independence believed that the final end of the state was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary, ... They believed that freedom to think as you will and to speak as you think are means indispensible to the discovery and spread of political truth, ... That the greatest menace to freedom is an inert people; [and] that public discussion is a political duty; . . . . Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law. . . . Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

"To courageous, self-reliant men, . . . no danger flowing from speech can be deemed clear and present, unless the incidence of evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. . . . . It is, therefore, always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it."

Mr. Justice Brandeis,
Whitney v. California **

"It is curious, and not irrelevant, I hope, to mention. . . the reaction I had upon reading Homer recently. . . . I had never read ***The Odyssey*** before, only ***The Iliad,*** and that but a few months ago. What I wish to say is that, after waiting sixty-seven years to read these universally esteemed classics, I found much to disparage in them. . . . But it would never occur to me to request that they be banned or burned. Nor did I fear, on finishing them, that I would leap outdoors, axe in hand, and run amok. My boy, who was only nine when he read ***The Iliad,***. . . my boy who confesses to 'liking murder once in a while,' told me that he was fed up with Homer, with all the killing and all the nonsense about the gods. But I have never feared that this son of mine, now going on eleven, still an avid reader of our detestable 'Comics,'. . . an ardent movie fan, particularly of the 'Westerns,' I have never feared, I say, that he will grow up to be a killer."

Henry Miller,
letter to Mr. Trygve Hirsh***

Freedom of Speech and Freedom of the Press: An Historical Perspective

In spite of all that has been said and written about free speech, the meaning of the First Amendment still defies absolute definition. Literally dozens of United States Supreme Court justices have commented on its meaning, and yet all of their authorship combined would not present a total definition. For it is a hallmark of freedom of expression that its nature is a constantly evolving one. If a comprehensive definition could be developed at all it would in a short time prove either inadequate or outmoded.

It is for this reason that the right to free expression is constantly being debated in the courts, and why one agency applying an established doctrine may find itself violative of that freedom, while another agency, under different circumstances, may apply the same doctrine and not violate it. This is a result of the balancing of interests which proceeds in the law; interests which Mr. Justice Brandeis alluded to in his quotation above. There are circumstances in which freedom of speech is protected to the individual but, in different circumstances, where the balance has shifted in favor of the state's right to protect itself, the same speech by the same individual may not be constitutionally protected.[1] It is exactly these subtleties which have given the concept of free speech its unique life, and which have nettled and aggravated college administrators and newspaper editors in their attempts to define what is protected speech and what is not. In a specific sense it is the purpose for this document.

While a lengthy dissertation on the history of free speech would require a book many times the length of this current project, it is instructive, however, to look at some of the antecedents of free expression in this country in order to understand the limitations on that principle which will be addressed in this presentation.

These freedoms originate with the Unites States Constitution, which states in part, "Congress shall make no law. . . abridging the freedom of speech, or of the press."[2] In its earliest application the First Amendment was given a very literal interpretation. In the view of many it impinged only upon the Congress, not even upon the co-equal branches of government.[3]

Social conditions have changed considerably since the days of the Founding Fathers, however, and freedom of expression has been given a steadily broadening sphere of influence. It was made incumbent upon the states through the Fourteenth Amendment,[4] and extended to newer medias such as radio,[5] television[6] and motion pictures,[7] as well. It has been further extended to listeners, readers,[8] recipients[9] and distributors,[10] in addition to the traditional speakers, authors and publishers. The protection of the First Amendment has even been extended to legislative activities which have the

indirect result of curtailing speech; something called the "chilling" effect. Under this concept, a statutory scheme which appears to have legitimate purposes, entirely independent of curtailing speech, might be voided if its application has the ***practical*** effect of inhibiting, or "chilling," free expression.[11]

If applications of the First Amendment have been fluid, however, the justifications for its existence have been comparatively stable. Although these justifications appear in a variety of semantic guises, and at various times during the history of this country, they are essentially three in number:

First, that a "marketplace of ideas" is necessary for the operation of a free society.[12] This idea is rooted in the belief that the real truth is more likely to emerge if all facts and all viewpoints are allowed to compete with one another for general acceptance. Second, there is the idea that free expression is an educational tool, that citizens must be well-informed if they are to keep and exercise effective control over their government and their own lives.[13] Finally, there is the belief that freedom of expression provides for self-fulfillment, allowing a citizen to freely express himself and to be the recipient of expression by others.[14]

Certainly there is no doubt in this day and age that, despite occasional discomforts arising from freedom of expression in practice—discomforts such as the parades and demonstrations which protested the United States' involvement in the Vietnamese war,[15] generally speaking—it is to the advantage of all citizens of a free country to enjoy the privileges of freedom of speech and freedom of the press. There is one important note of caution, however. The freedom to express oneself is not an absolute freedom. Certain forms of expression have traditionally been unprotected by the First Amendment.

"There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of peace."[16]

To this should be added certain kinds of conduct in times of war, expression which is devoid of all content other than incitements to violence,[17] and expression which is "utterly without redeeming social importance."[18]

It is evident that these types of expression may allow for ***prior*** restraint, particularly when "exceptional" circumstances exist.[19] But these circumstances, to be "exceptional," must involve some promise of "material" and "substantial" disruption of the peace in order to allow for the suppression of speech[20] (excluding, of course, obscenity, which is unprotected because it is worthless, and libel,

which is unprotected because it is untrue and malicious). And the limitations imposed by the state must never exceed the legitimate aims of government.[21]

This is the effect of balancing the right of an individual to freely express his views against the right of the state to protect and preserve itself, and to suppress speech which could not possibly achieve any of the goals of education, self-fulfillment, or marketplace competition which are the foundations of the free speech idea.

It is clear then, that as individuals, citizens of the United States have the right to freely express themselves. But is is equally clear from rulings of the United States Supreme Court that the government and its agencies may make ***reasonable*** regulations regarding the time, place and/or manner of expression,[22] and that in times of extreme danger they may indeed suppress speech.[23]

"The question in every case [not involving obscenity or libel] is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."[24]

It is exactly this ambiguity as to when an agency may protect its interests as against the individual's right to free speech that has so continuously confused college officials, newspaper personnel and the public in general with regard to the legitimate limits of freedom of expression. Unfortunately, the problems raised by [these cases] defy geometric solutions. The best one can hope for is to discern lines of analysis and advance formulations sufficient to bridge past decisions with new facts. One must be satisfied witth such present solutions and cannot expect a clear view of the terrain beyond the periphery of the immediate case. It is a frustrating process which does not admit of safe analytic harbors."[25] Nevertheless, these are exactly the concerns on the part of all parties to the free speech issue which need illumination.

Legal Distinctions Between Public and Private Colleges and Universities.

It is traditional wisdom in constitutional law that the Constitution protects persons from infringement of their rights only as a result of ***government*** action– federal, state or local. This is known as the requirement of "state action."[26] State action which inhibits freedom of expression is prohibited in the case of the federal government by the Fifth Amendment,[27] and in the case of the other domestic governments by the Fourteenth Amendment.[28] As a result of the "state action" requirement, private institutions and individuals have had much more constitutional leeway in controlling and regulating individual behavior; behavior with which their public counterparts could not have legally interfered.[29]

Mere private ownership or operation of an institution, however, does not mean ***ipso facto*** that it is free to ignore the commands of the Fifth and Fourteenth Amendments. In the past and more frequently in recent years private institutions have been found by the courts—including the United States Supreme Court— to be engaged in "state action."[30] Many theories have been advanced to demonstrate state action on the part of private institutions. For example, where a traditional public function is performed by a private entity;[31] where state law commands or sanctions discrimination on the part of private entrepreneurs;[32] where a radically discriminatory custom or practice on the part of private institutions is enforced or compelled by the state in any way;[33] where state courts are used to enforce private racial covenants;[34] or where ***significant*** state involvement or participation in the activities of private organizations is found.[35]

Where alleged state action on the part of private institutions is not so obvious, the Supreme Court has indicated that "only by sifting facts and weighing circumstances can the non-obvious involvement of the state in private conduct be attributed its true significance."[36] The Supreme Court's recent, ***ad hoc*** test is spelled out in ***Burton*** v. ***Wilmington Parking Authority:*** "has [the state] so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint ***participant*** in the challenged activity?"[37] More recently the Supreme Court has announced that state action will be found when a "symbiotic relationship" exists between the state and the institution.[38]

The cases cited above indicate that courts are more likely to find "state action" in situations where private ***commercial*** activity is challenged rather than activity involving a private college or university. Thus, while holding that a private entrepreneur's performance of a public function may serve as the basis for finding state action,[39] the courts have tended not to accept this argument when applied to private ***educational*** institutions.[40] The reason for this seems to be that higher education has not traditionally been considered exclusively a ***public*** function. Private colleges and universities have flourished in this country for well over three hundred years, with neither public nor private schools maintaining a monopoly. Many judges are given to the belief that one of the great characteristics of America and its way of life is the pluralism and diversity of its society, and that this social and mental non-conformity is fostered and advanced by a dual system of public and private schools.[41] In addition, courts have traditionally taken a "hands off" approach towards their involvement in the management of institutions of higher education.[42] Thus, it seems that courts would prefer to allow private schools to exercise greater control over their student bodies, rather than create a monolithic educational system wherein constitutional protections are equally extended to all students.

Cases finding "state action" in private commercial ventures may be distinguished on yet another ground: most of them have involved racial discrimination.[43] Private college student cases, on the other hand, have generally involved issues of student "freedom," and usually not First Amendment freedoms. Up to the present, the latter issues have not been as significant to today's society as the former; at least not in the educational arena. This marked judicial distaste for racial discrimination might have been the turning point in one of the few cases where a private school was held to have been engaged in state action.[44]

Although there may be much merit in awarding to ***all*** students in this country the same measure of constitutional protection from infringement of their rights by school authorities, it seems unlikely that this will be attained during the tenure of the present Supreme Court. In the area of individual rights, the current Supreme Court appears much more circumspect than its predecessor. As a result of two recent decisions, ***Moose Lodge*** v. ***Irvis*** and ***Lloyd Corporation*** v. ***Tanner,***[45] they have given fair notice that one ought not to anticipate an extension of individual rights when they collide with the rights of ***private*** institutions in the near future. This seems to be a retreat from the Court's earlier, libertarian point of view, as expressed in ***Burton*** v. ***Wilmington Parking Authority,***[46] and a set back for the thesis that equal rights for private school students were just around the corner.[47] It now appears that courts, as a general rule, will hold that private colleges and universities are not as subject to the commands of the Constitution as their public school counterparts, and the dichotomy between public school and private school students' rights (including First Amendment rights) will continue for the foreseeable future.[48] There are a few circumstances in which a court may conclude otherwise, however:

1. For example, where alleged racial discrimination has taken place and the private school which ***practiced*** the alleged discrimination has received a ***substantial*** measure of financial support from the state.[49]

2. Where the state has "so far insinuated itself into a position of interdependence" with the private school "that it must be recognized as a joint participant in the challenged activity;"[50] or

3. Where the state has by some manner or mode–by statute or judicial decision– placed its official imprimatur on unconstitutional action taken by a private school.[51]

It seems clear from the cases, however, that the mere receipt of state funding, not essential to the school's existence,[52] or mere licensing of school activities by federal government agencies[53] will not support judicial finding of "state action." Thus, where the state does not involve itself in the regulatory or disciplinary matters of a private school, more circumscription of constitutionally protected

freedoms can permissably exist than would be allowed on a public school campus.[54] Although the line of demarcation cannot be exactly drawn, there are many infringements of personal liberties which may be practiced by private schools without fear of court intercession.

The distinction between public and private schools is raised chiefly to indicate that the protection of freedom of expression is not equal on every college campus across the nation. To be sure, the requirements of free speech and free publication may vary from circumstance to circumstance, ***even on the same campus.*** It has been explained previously, for example, that dangerous circumstances can act to limit freedom of speech even on a ***public*** school campus.[55] It is equally true, however, that the freedoms guaranteed to college students and college newspapers may vary from campus to campus according to its ***public*** or ***private*** nature. Although it is impossible to say at this time that private colleges and universities are totally exempt from any obligation to allow freedom of speech or freedom of the press on their campuses, it is evident that they are less frequently drawn under the prohibitions of the First Amendment because "state action," as required by the Fifth and Fourteenth Amendments, is absent. Consequently, the opinions expressed here apply more directly to ***public*** institutions, which by their very nature and operation involve "state action," and are therefore automatically placed under the prohibitions of the Fifth and Fourteenth Amendments. As a result they are obligated to extend to their students all reasonable rights and privileges guaranteed to them by the Constitution. One is left to conjecture, since Constitutional freedoms are distinguished along public/private school lines, whether they might not also be distinguished along graduate/undergraduate undergraduate/secondary school or adult/minor lines as well. This subject will be further explored in a later section.

In commenting on the legal situation of private colleges and universities, the author does not mean to imply that the ***same*** measure of freedom is der ' to all students at ***all*** private colleges and universities. Some private schools have exemplary records in the area of students' rights, indeed are forerunners in the field. It is unfortunate, however, that these freedoms cannot be judicially guaranteed at private schools (in most cases), and are not consistently applied across all university student bodies, public ***and*** private. But, however unfortunate, this seems to be the current status of the law.

Legal Distinctions Between the Campus Press and the Public Press

No substantial ***legal*** distinction between the status of the campus press and that of the press at large[56] has been discovered in

researching this issue. To be sure there is a much greater body of law with respect to the press at large. Although growing rapidly, the number of legal cases involving campus newspapers and other college publications is still relatively small by comparison.[57]

In the campus newspaper cases which *do* exist, however, the courts have attempted to make no substantive distinction between the legitimate objectives of the campus press and those of the press in general; nor for that matter, have they distinguished the legal status of the two institutions. Indeed, one learns through such cases as ***State*** v. ***Buchanan***[58] (an Oregon case involving a student editor) and ***United States*** v. ***Caldwell***[59] (a parallel case in the United States Supreme Court involving a representative of public press) that student editors will be held to the same journalistic standards as members of the press in general.[60]

This is obviously a mixed blessing for the campus press. On the one hand students may view it as "liberation day," a day having dawned when they are entitled to the same status, credibility and opportunity to pursue the news that has been traditionally awarded to members of the public press. This would be a wholesome development indeed, for campus publications have far too long been treated as second-class citizens, denied access to those important news events which might better challenge their journalistic skills and inventiveness. Rather, the campus press has been eternally condemned to those lesser concerns and stories which have traditionally been the substance of college and university newspapers.

The sword has another edge, however. The protection from public scrutiny and public accountability which newswriters have enjoyed for so long appears to be breaking down somewhat. Cases such as ***Caldwell*** introduce a new, and perhaps dangerous, measure of individual responsibility into the journalism field. Obviously, if the campus press is to receive the same advantages as the public press, it must suffer the same responsibilities. These responsibilities, such as the legal responsibility to divulge "confidential" news sources, are something fairly new to the campus press.[61] Traditionally, it has been sheltered from the impact of civil and criminal suits by the sponsoring educational institution.[62] (Responsibility for libel, slander, obscenity and pornography will be considered at a later point). If, on the other hand, the current outcry over the ***Caldwell*** decision and its progeny[63] results in protective legislation,[64] the campus press should share equally in its protection, since it has shared equally in its responsibilities.[65]

The concept is introduced here merely to put into perspective the fact that the courts have made no meaningful distinction between the responsibilities and freedoms of the student press and those of the press at large. In the absence of this distinction, it will be helpful to this analysis to use cases involving non-campus newspapers where no case law involving campus newspapers seems to exist. Since the

courts have not seen fit to distinguish the two, it would appear that cases involving both types of newspapers could be used interchangably without distorting the law in the case of the campus newspaper.

Although there may be many differences between campus newspapers and general-circulation newspapers, such as readership, coverage, financial base and journalistic experience, to name just a few, they also have a great deal in common. Both have a certain responsibility to "inform, educate, and entertain," and to present the news fully and fairly. They also have the legal responsibility to avoid unprotected and punishable speech such as libel and obscenity.[66] Each has its own readership to which it ***ought*** to be responsive, albeit not slavish. If these newspapers do their job well, they will occasionally strike sparks, make their readers wince, and cow or infuriate the objects of their criticism. So much so, that they, or their supporters, may occasionally raise the spectre of libel and obscenity as a means of curtailing speech which irritates and antagonizes them: speech which falls ***quite short*** of actionable libel and obscenity as a ***legal*** matter—particularly applying the standards of latitude normally allowed to campus publications today.[67] Except where these objections become acute and disruptive, the false flags of obscenity and libel should not be raised.[68]

It should be noted here, however, that university administrators (and alumni) are not the only ones who object to the tone of campus publications. Students often express their displeasure too—even to the extent of starting their own, competing publication.[69] But the universities' response to the issues of libel and obscenity is generally an ***over***-response, ***legally*** speaking.[70] One is tempted to ask, however, whether the ***legal liability*** of the newspaper (and through it, the university) is the ***only,*** or at least the only ***proper,*** limitation on what is "publishable" material.

A number of courts have recognized that college campuses are places where higher than ordinary standards of excellence exist, or at least ***ought*** to exist.[71] They have said that this is not true just in scholastic matters, but in the areas of student conduct and deportment as well.[72] It is well-known, of course, that college communities are not just cross-sections of society at large. The intellectual caliber of the persons attending and professionally employed there is, or at least ***ought*** to be, substantially higher than the average intellect in society as a whole. Under these circumstances, it might well be argued that a broader range of literature and speech could be coped with on the campus than in society at large.[73] But, it might equally be argued that the educational community should set ***higher*** intellectual standards for itself than those minimum standards of protected speech which prevail in the general society. The university—as an educated community striving for high intellectual achievement—should be ***at liberty*** (if not ***obligated***) to set and enforce standards of communication which are substantially higher than the low

common denominator which exists for society as a whole.[74]

On another front, the courts indicate that a school may not legally curtail constitutionally protected speech (that is, speech which is not ***legally*** obscene, libelous, or the like) unless that speech threatens to "materially and substantially disrupt" a ***legitimate*** activity of the school.[75] For simplicity's sake, the author calls this the ***"Tinker*** test,"[76] but is has been followed by many other courts faced with cases involving protected speech in public schools.[77] Just recently, the factual showing necessary to meet the test has been shrunk somewhat (perhaps too much), in ***Norton*** v. ***Discipline Committee of East Tennessee State University.***[78] (The facts of the actual Tinker case presented a fairly open-and-shut case with regard to freedom of speech.) Nevertheless, the wording of the basic "test" remains the same.

Despite this minor advance in evidentiary details, it remains difficult to imagine a quality education going forward in an institution which was simmering just below the level of "material and substantial disruption" as the result of free expression. One might understand why this should be the proper standard for the community at large, because it is spacious and offers many opportunities to avoid the occasional discomforts of freedom of expression in practice. The campus community, on the other hand, is relatively "closed" (depending upon its size), and lacks the numerous outlets necessary to dissipate irritants. Furthermore, it relies more than the general communtiy on peace and quiet to achieve its objectives. It is far easier to imagine work going on in a fairly disrupted atmosphere than study, for example.

The factual index of what constitutes a "material and substantial disruption" varies, of course, with the circumstances. It would normally take less to cause one in a library than on a busy street corner. And apparently courts have recognized that a continued distraction is more likely to "disrupt" than an isolated one.[79] Nevertheless, the ***Tinker*** test as it is presently applied—a balancing test between the right of the individual to freely communicate and the right of the school to pursue its mission—seems too high for the school to ***truly*** accomplish its goals.

At present there is no adequate ***legal*** answer to the problems mentioned above. The ***Tinker*** test stands, although its factual base has been significantly modified (perhaps ***over***-modified) by the ***Norton*** decision. The standards for libel and obscenity on campus, as far as case law goes (which isn't very far) *are* ***pretty*** much[80] the same as they are for the community as a whole. Some courts see a need for higher standards of free speech on campus,[81] while others make a case for lowering the existing ones.[82] And so it goes.

These issues are raised here not in order to solve them, but simply to inititate debate and indicate that there are alternate solutions. It is fair to say that the campus press is not just a minature version of

the press at large. The campus press has its own purpose and destiny. Courts of law will serve as a poor place indeed to refine that purpose and destiny. Frequently the campus press is taken too seriously. And all too often it is not taken seriously enough. It is up to the papers, their editors, mentors, and sponsoring institutions to decide finally what role they will play on the campus—not the courts.

Three Ways to Operate a University Newspaper, and The Legal Consequences Thereof

A quote from an excellent, and illuminating court synopsis regarding the status of the campus press[83] properly introduces this section.

"[The] plaintiffs [student-editors at a state university]. . . have a constitutionally guaranteed right of freedom of expression which is protected against state infringement[84] . . . including freedom of the press[85] . . . [and] is protected on the campus of a state university[86] . . . but [which] may be regulated by the university in the promotion or protection of a valid university interest."[87]

It goes without saying, of course, that students attending public colleges and universities don't "shed their constitutional rights to freedom of speech at the schoolhouse gate."[88] A state school may not exact an "unconstitutional condition" of a student as a precondition to his entry into the institution.[89] At the same time it is well-established that public school officials ***may*** make ***reasonable*** rules with regard to student conduct on campus.[90] But, the "Fourteenth Amendment. . . protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These [Boards] have. . . important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights."[91] "In our system [of education], students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved."[92] Having established these as the general parameters of institutional/student publication relationship, it is possible to examine each of the several types of relationships, and their legal consequences in some detail.

There are three basic ways in which college and university newspapers relate to the educational institutions which they serve. The three, simply stated, are: first, the newspaper which serves as a "house organ;" second, the campus press, an institutional newspaper which is supported, and often housed and financed, by the university, but not controlled by it; and third, the truly independent student press which, although it serves a university public and often

uses the university's name and imprimatur, is not "sponsored" by the university, nor dependent upon it for its livelihood.

Clearly each of these situations presents a different degree of university-newspaper involvement; and consequently with differing degrees of control and/or liability on the part of the sponsoring institution. Each of these three types of relationships will be explored for legal structure and consequences.

The House Organ. This author has some difficulty with the concept of "house organ" presented by Mr. Duscha in his "first alternative" for the campus press, ***supra.*** The dictionary definition of a house organ is "a periodical issued by a business or other establishment primarily for its employees, presenting news of the activities of the firm, its executives and employees." In the university setting it is something akin to an alumi newsletter, except that it is aimed at students, faculty, staff and administrators rather than alumni. In these days of increasing student press independence it may prove advisable or necessary for an institution to establish its own house organ in order to communicate accurately and punctually information concerning its news, schedule, policies, ***etc.***

Obviously, the university has virtually complete control over its own house organ. The question of whether a newspaper is a house organ, however, is one of fact. It is evident from case holdings that a university cannot maintain a newspaper which is for all intents and purposes free from restraints and then attempt to restrain it simply by asserting it was never their intention that it be anything but a "house organ."[93] In the law "labels" are irrelevant. A newspaper ***is*** what the facts indicate that it is, labels notwithstanding.[94] A ***true*** house organ, therefore, would be entirely owned, written, prepared, financed and distributed by the ***university.*** Persons who participated in its preparation would, literally or figuratively, be employees of the university hired to do its bidding and subject to dismissal for failing to follow its express dictates with regard to the house organ. Under these circumstances it is extremely doubtful that any monies collected as student activity fees could be used to finance the house organ, since it is not, literally speaking, a ***student*** activity. General university fees or tuition income could be used to finance the house organ, however, in the same way that these revenues are used to support the cost of central administration. Obviously, a true house organ is not under the control of students, "nominally" or otherwise.

A university would not generally accept advertisements for inclusion in its house organ. It would be devoted exclusively to a dissemination of relevant factual materials regarding university life and policies. Although the normal house organ would not publish editorials, there is no reason why this wouldn't be legally permissible. The important thing to remember with respect to a house organ is that it cannot be held out to either its participants, the

university, or the community in general as being anything other than the "party line" of the institution involved.

In these circumstances there is no true freedom of the press. The ideas and views expressed are those acceptable to the institution and its leadership, rather than those of the various contributors to the house organ. In other words, by eliminating the paper from consideration as a free medium of discussion it would be legally permissible to use it exclusively as a method of disseminating the "party line" ***so long as*** it is perfectly clear to everyone that these two objectives were not intermingled. Obviously, the university, as well as the individual writers and editors, would be liable for any material published in the house organ which was libelous or obscene. The university assumes this responsibility when it associates itself inflexibly with the preparation, printing and distribution of the house organ. Students, and persons working for the house organ, cannot be heard to validly complain that it is not a free medium of speech insofar as it was never intended to be.

Another form of university newspaper which has a legal status similar to that of a house organ is a newspaper, generally a student-dominated newspaper, which is utilized ***solely*** as an instructional tool. With some sixty schools and 175 departments of journalism abounding in this country there are undoubtedly a number of "laboratory" newspapers which are used principally, if not exclusively, to develop the journalistic skills of enrolled students. Here again, the purpose of the newspaper, without regard to its distribution, is other than providing a free mode of expression. Unlike the house organ, the principal function of which is to inform, the newspaper aimed at developing journalism skills has as its principal function to instruct. It is irrelevant under these circumstances whether the material presented is the personal opinion of the author or not. What ***is*** important is that what has been written by the author and "published" in the "newspaper" is journalistically acceptable, and successful as an educational exercise. In circumstances such as this, students cannot legitimately complain that their views were not allowed free expression since the purpose of the newspaper from the beginning is not to provide free expression, but to serve as an educational medium. It should be made clear to everyone participating in the "laboratory" course, however, as well as anyone who might receive its product, that said product was meant primarily as an instructional tool, and that the materials printed therein are not offered as the opinion of the author, or the editors, or the school, but are rather the result of an instructional exercise which could have undergone some censorship and reconstitution in an effort to produce the educational result desired.

In both cases, that of the house organ and the instructional tool, the question of whether the paper can be so categorized is one of evidentiary fact. A public institution will not be protected in the

censorship of its student publications, although it insists that they are house organs or teaching vehicles, if the evidence reveals that these publications have not been restricted to these functions or managed according to the models discussed above. The case of ***Trujillo*** v. ***Love*** is the principal case in point.[95] In that 1971 case, school officials at Southern Colorado State College attempted to control and censor the content of a student newspaper, contending that it was intended as an instructional tool. The court rejected the school's argument because the school had not ***in fact*** carried out its plan of using the newspaper as intended. The court found that the school officials had failed to give journalistic instruction, failed to exercise supervision over the newspaper and its staff, and had arbitrarily reviewed the plaintiff's writing while leaving other students' writing unexpurgated. In the court's words, the "policy of the administration and faculty was not. . . put into effect with sufficient clarity and consistency to alter the function of the newspaper. As a result the newspaper continued to serve as a student forum and the restraints placed on the student's writing did abridge her right of free expression. . . ."[96] A similar conclusion was reached in the case of ***Zucker*** v. ***Panitz,*** which involved a high school newspaper.[97] In that case school officials alleged that the newspaper was intended only as a teaching tool, while the ***facts*** showed that it was a largely unsupervised student activity of general circulation. The court found on behalf of the students. Clearly, the facts will govern in every case. Where a university intends to publish a "house organ," it must not allow it to assume the appearance of a student press. Where the university intends to use its newspaper principally as a teaching tool, it must not allow students to dictate its form and content; it must offer journalism instruction to all participants; it must supervise and criticize all work;[98] submitted materials must meet established criteria, and censorship is allowed only to achieve a "quality" standard;[99] and (inferentially at least) academic credit should be given for work performed.[100]

Where there is no general agreement within a university concerning the status of a newspaper, facts will clearly govern and past history will play a large and influential role.

The "Campus" Press. A second method of operating a campus newspaper is the one most familiar to college students. It is the circumstance in which a college or university supports, houses, and generally finances a student publication, but one which it does not in fact actually "control." This is the traditional "campus" newspaper on both private and public college campuses. In these situations the student press is often extremely dependent upon the university for its livelihood. Generally speaking it accepts portions of a required student activity fee or a direct grant of university funds in order to meet its expenses. And it is generally the belief of the

publication's editors and university officials that it could not survive if it were forced to meet its budget from the sale of newspapers and/or advertising to be printed in the paper. In some ways these student publications are independent but, in many other ways, they are extremely dependent upon the institutions which sponsor them. Some have referred to them as "captured" publications.

It is almost traditional with papers of this type to be somewhat antagonistic and hostile to the administration of the school which sponsors them. Although this may often be discomforting and occasionally even damaging to the school's image and reputation, the school abdicated most of its opportunity to censor or otherwise control the opinions expressed in the school's newspaper when it was established as a "forum for student expression."[101] At this writing it is fairly well established that a college or university is not ***legally*** the "publisher" of the student publications which it sponsors, and may not censor or otherwise unduly influence the contents of those publications, directly or indirectly,[102] insofar as they are not ***legally*** libelous[103] or obscene[104] and do not threaten a "material and substantial disruption" of the university's educational mission.[105] It might be mentioned, parenthetically, that the university stands in the same relationship to student publications which it does ***not*** sponsor, except that the university bears no legal responsibility for publications which it does not sponsor, support, house, ***etc.***[106] In the words of the court: ***"The state is not necessarily the unrestrained master of what it creates and fosters."***[107] Obviously, however, the university may make ***reasonable*** and non-discriminatory rules with regard to student participation in school-sponsored publications,[108] and with regard to the time and place for sale or distribution of these and other publications.[109] The true "campus" publication described above is not to be considered in any ***legal*** sense a "house organ," however.

This does not mean that the university should forsake all forms of supervision over campus publications, for on many campuses, they are the only route by which students can obtain any journalistic experience. It does mean, however, that a university cannot assume censorship power over a campus newspaper or other publication which is ostensibly a free medium of student expression. A university may influence the quality, size, even the very existence of a campus publication by exercising its legitimate rights to grant operating revenues,[110] participate in the selection of editors, appoint faculty or professional advisers, or supervisory boards of publication, but it may not use these legitimate supervisory functions as an invidious means of controlling the ***content*** of the publication.[111] This leaves it to the imagination whether it is "discriminatory" to prefer a "conservative" publication to one which is "libertarian" when university funds are granted and publications of both descriptions exist on the same campus. This question would probably turn on

whether evidence could be adduced which showed that the decision was made with censorship intent. It is clear, however, that the university administration is not ***legally*** the "publisher" of the campus newspaper.[112] Perhaps this is because the newspaper is a ***vehicle*** for student expression; perhaps it is because the university administration seldom exerts continuous supervision over the newspaper's contents, but attempts to influence only those articles which it wishes to suppress;[113] or perhaps it is because there is no employer/employee relationship between the university and its student editors. Whatever the reason, the conclusion is clear. Whether this permits the editors, publications board, or student government to stand in the place of the school as "owner-publisher" of the newspaper is doubtful. But it is clear that the courts are not willing to recognize the school as owner-publisher of the ***student*** newspaper and thereby give it editorial control over its contents.[114] The courts distinguish the university's power to prescribe classroom curricula from their control of student activities.[115] Although publications advisers may require changes in the ***form*** of submitted materials in order to meet reasonable journalism standards,[116] these changes must deal only with the ***form*** or the time and manner of expression, they must not alter its ***content.***[117] It also means that student editors may not be dismissed for nothing more than the exercise of their First Amendment rights.[118]

In order to protect itself in these circumstances, a university should insist that a disclaimer be published as part of the masthead of any newspaper which it supports. The disclaimer should state in no uncertain terms that the opinions expressed in the student newspaper are ***not*** those of the university, and indeed may not be those of the editors or the editorial board either, but only those of the named author of the article. This disclaimer is recommended less as a method of limiting the school's liability for the statements published in its student newspaper, than it is as an effort to clearly state to those persons who might receive and read said newspaper exactly whose ideas are being expressed therein, and to whom they should be attributed.[119]

Where an institution has brought a student publication into existence the courts will make certain that it does not use labels such as "house organ" as a subterfuge to deny First Amendment rights to its students and bring the publication within its own control. The Supreme Court has recently cautioned against such limitations on academic freedom.[120] While a university may decide as a result of difficulty with a campus publication to discontinue that acitivity entirely and not be exposed to judicial risks, they may not allow a student press to continue and attempt to censor same.[121]

It is an interesting footnote to this section that the Internal Revenue Service has recently ruled on the separation of responsibility between a university and its student newspaper. In recent

years a number of institutions had become concerned that they, and their student newspapers, would lose their tax-exempt status if the newspaper endorsed political candidates in violation of ***IRS Code Section 501 (c) (3)*** which makes it illegal for tax-exempt institutions to "attempt to influence legislation" or participate in "any political campaign on behalf of, or in opposition to, any candidate for public office." In holding to the contrary, the Internal Revenue Service stated that "[the] expression of editorial opinion on political and legislative matters. . . would. . . appear to be an accepted feature of legitimate student newspapers. The publication and dissemination of. . . editorial statements. . . by students. . . in the course of bona fide participation in. . . academic-related functions of the educational institution. . . . [is] not attempt[ing] to influence legislation or participate in the political campaigns. . . within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1954."[122]

The Independent Student Press. The third type of university-related student publication is the ***independent*** student press. In recent years a number of universities, including some very prestigious ones,[123] have moved from a campus press to an independent student press situation.[124] The distinguishing feature of a truly independent student press is that is has separated itself corporately, financially, and usually physically, from the university's supervision. It is not generally housed in university buildings and when it is, it generally pays rent, as would any other private enterprise using university property. While it may rely somewhat on the university community for revenue, as in the sale of subscriptions and advertising space, it is not subsidized by the university either through direct payments or through the distribution of collected student activity fees. The independent student press may retain the name of the newspaper which preceded it as the "campus" press, and may also use the university's imprimatur, but always as a result of special agreement with the university. The independent student press invariably serves the same university community that it did when it was a campus press.

The advantages of a truly independent student press both to the university and the publication are many, but there are also liabilities. Among the advantages to the university is the fact that one of the largest drains on student activity monies (up to 30 or 40% of the total on some campuses) is eliminated. Secondly, the university may cease to concern itself with what is printed in the student publication, insofar as it is independent of the institution. The university does not need to concern itself with the selection or deselection of personnel either, or with the offering of technical assistance, office space and so forth. Generally speaking, the university also finds that the independent student press is less hostile toward the central administration and often less concerned about university affairs than it was when it was under the aegis of the college or university. Thus,

the temperament of the paper might change to the point where the university is viewed in a fairer light as a result of independence.

The advantage to the newspaper itself is that it has a much freer hand in running its operation. It need not be concerned, as campus newspapers generally are, with battling the university administration. Generally, this gives student editors and writers a more mature attitude with respect to their publication and with respect to the university.

The disadvantage to the university is chiefly that it loses control over a principal student activity; one which often serves the school well in advertising certain campus events, services for which the university will have to pay once the publication becomes independent. The university is also put in the position of being encouraged by remaining students to commence a second campus publication in the absence of the one which has gone independent.

The disadvantage to the independent student press, of course, is the fact that it can no longer depend on the revenues generated by the university and the free services such as office space which the university provided. Selling subscriptions and/or advertising in order to meet its publishing budget can be so untenable a position that an independent student publication may go bankrupt as a result. This, indeed, is the biggest reason why more campus publications don't press harder to become independent.[125]

Obviously, the question of whether a student publication is truly independent of the university or not is just as much a question of fact as whether it is a house organ or campus newspaper.[126] Labels are irrelevant. A ***true*** independent student newspaper will be separately incorporated where it is incorporated at all. It will not use university services or facilities, and when it does it will pay a ***reasonable*** fee or rent for them. It must receive no direct or indirect subsidy from the university, although payment for routine bulk subscriptions and advertising space at prevailing rates is not considered a subsidy. If the independent student newspaper uses the university's name or imprimatur, it should do so only pursuant to a specific agreement with the university which includes a condition that the newspaper will publish a disclaimer of affiliation in each issue as a ***quid pro quo*** for using the university's name. Simply put, the university cannot afford to commingle its interests with those of the independent student publication or a court may find that it is not a ***truly*** independent publication at all.[127] If an independent student publication is found to be ***truly*** independent, however, there is clearly no liability on the part of the university for statements made and positions taken in that publication. At least this is the case where the university ***actively*** disclaims any control over, or responsibility for, what is printed in the publication. The independent student press is responsible for its own indiscretions with regard to obscenity, libel and the like. But, in fact, these liabilities are seldom

pressed against the press in general, and almost never pressed against university publications, whether they be traditional campus publications or truly independent ones.

Although the truly independent student press is by far, as an institutional and editorial matter, the most preferable of all the press/college relationships discussed above, it is often untenable because of the overwhelming financial burden which must be assumed. It would appear that most institutions, public and private, will retain the traditional campus press for some time to come as the relevant relationship between university and student publications. What is important at this point is that the institution and the student participants ***understand*** the relationship, ***whatever it is,*** and demonstrate a willingness to live within it.

General Discussion of Issues. A point often overlooked in discussing the types of student publications which an educational institution might sponsor is that the institution is not obligated to have a student press at all.[128] As a result of legislative grant, public university administrators and teachers are given broad powers to determine how the educational policies of the institution are to be implemented. Within this assortment of powers is one which allows university administrators to decide upon the courses and other activities which will comprise the school's curriculum. Up to the present, there have been very few suits which have challenged this power.[129]

The reason for this judicial "hands-off" policy is that "neither the Constitution nor . . . state education laws provide courts with specific standards with which to assess the legality or propriety of academic decisions in public schools."[130] Although the courts as a rule will not second guess an administrator's decision with regard to course content, there are a few situations in which a challenge to his authority to prescribe curriculum may be sustained. This is true, for example, where the challenged decision lies within the realm of judicial cognizance and where the decision does not depend to a substantial degree upon the special expertise or knowledge of the administrator.[131] In the past, the court has intervened where a curricular decision transgressed the Constitutional prohibition against the "establishment of [a] religion,"[132] and where a decision by an administrator worked an invidious discrimination in violation of the "equal protection" clause of the Fourteenth Amendment.[133]

However, school administrators may decide as an educational matter that a student newspaper is not to be desired. In such cases, students will not be heard to demand that the university must provide a forum for student expression. No court has ever ruled that a college or university is constitutionally required to do so. School authorities have been given broad discretion to determine which activities are to be funded by the institution and which are not.

Decisions made within the scope of their authority will be allowed to stand, absent some showing that they were made with discriminatory intent in violation of some Constitutionally protected right.[134] Students are free, however, to publish their own publication without school funding, so long as their activity does not materially and substantially disrupt or interfere with the maintenance of order and discipline within the school.[135] However, once the administration ***does*** decide to sponsor a student publication, that is, a publication which does not qualify as a "house organ" or "laboratory model", then it lacks the power to qualify the students' right to free expression therein. This assumes, of course, that no limitation is necessary in order to avoid disruption to the institution.[136] Once a student publication is authorized and approved by the school, it must be operated in accord with First Amendment principles.[137]

It might also be noted here that censorship in any form is equally reprehensible to the courts. That is to say that once the university has decided to establish and operate a newspaper, and prior to any decision to discontinue same, the availability of money, office space, or any other resource necessary to publish the paper, including the selection and deselection of personnel, may not be used as a subtle way of influencing the material published therein, and as an indirect form of censorship. In other words, school administrators are not free to reward those editors and publications of which they approve and to withhold support from those they disapprove ***if*** their only purpose in doing so is to curtail freedom of expression in the latter publications. That would be just as much a violation of First Amendment freedoms as it would be for the president of the university to enter the publication office and edit student copy prepared for publication. That is to say that the university, having decided to sponsor a student press, may not use the power of the purse as an indirect means of censorship. It is just as reprehensible a a curtailment of First Amendment freedoms as direct censorship would be.[138]

The contention of some students that it is improper, if not illegal, for the university to levy and collect student fees for the promotion of activities with which those students disagree, or in which they cannot share, is another issue of interest. Such a proposition was raised in the 1971 case of ***Fellner*** v. ***McMurray.***[139] In this case, a number of student argued that they were entitled to withhold payment of fees which were used in part to support a student newspaper that they found to be objectional on political, moral and philosophical grounds. ***Without citing any authority,*** the court flatly rejected their contention. It seemingly based its decision on the power of the state— through the board of education— to determine the educational policies and objectives of the institution. Apparently the power to assess student fees is distantly related to the authority

of the state to create and maintain a system of public education.

Still another court has taken judicial notice of the legislature's inherent power to levy and allocate student fees which it deems necessary to the proper functioning of the school. In ***Rainey*** v. ***Malone,*** the court said,"... we find no difficulty in arriving at the conclusion that the legislature has the power to authorize a student union fee."[140] The general rule has been that, in the absence of any prohibition to charging tuition and other fees, the board of regents of a state college or university is empowered to collect incidental fees to cover expenses necessary and convenient to the accomplishment of the objectives for which the institution was founded.[141] The decision as to how the student fees will be allocated rests with the sound discretion of the school officials.

It should be noted, however, that the extent of the power to assess student fees and the degree of discretion in distributing them may be governed by statute. A statute involved in the ***Antonelli*** case authorized student fees to be "expended as the president of the college may direct in furthering the activities from which the fees and receipts were derived."[142] The court construed this statute as limiting the president's discretion to a "determination [of] whether [or not] the funds... expended actually furthered the activities to which they [were] intended to be applied." With that determination, the expenditure had to be made. The president had "no duty... to pass judgment" on the activity itself. [143] The court will not review the wisdom of a particular decision unless a clear abuse of discretion is shown. In most cases, then, the administrator's decision will stand.[144]

The school's funding of the student newspaper in the ***Fellner*** case was clearly not an abuse of administrative discretion. Most colleges and universities are expected to provide a forum for student expression and the approval of funding for such a medium will certainly not be considered an abuse. The fact that some students did not concur with the views expressed in the newspaper did not entitle the disgruntled students to withhold fees assessed within the bounds of the administrator's discretion.[145] This does not mean, however, that students who disagree with the positions taken in a student newspaper may be systematically foreclosed from expressing their own opinions. Freedom of expression means that any student on a campus which supports a student newspaper should have ***some*** access to the printed medium for expressing his or her opinion so long as it meets reasonable journalism standards.[146]

The courts have found the same right of access exists where advertising is concerned, including "editorial advertising."[147] The basic rule is that the press must be accessible to all persons on a non-discriminatory basis. In the ***Fellner*** case, however, the students who disagreed with the content of the student newspaper had their best recourse in the exercise of their own First Amendment rights by

starting a publication of their own, reflecting their views. If their expressions did not find an immediate outlet in the newspaper because it was controlled by a student group they deemed unrepresentative, they should seek other avenues of expression or attempt to gain representation on the newspaper in a legitimate manner. They should not seek to infringe or abrogate the rights of the controlling students to their freedom of expression.[148]

It should be perfectly clear from the foregoing that educational institutions which ***sponsor*** student publications, (not "house organs" or "laboratory models," and not ***unsponsored*** student publications which are independent of the institution), must be "even handed" in their treatment of these publications and their personnel, and keep "hands off" with respect to censorship, direct or indirect, at least insofar as that censorship is not necessary to avoid ***legal*** libel and obscenity (rare almost to the point of non-existence) and/or material and substantial disruption of the institution.

The decision to create a student publication and, if created, the decision as to what type it will be rests initially with the university. If the school officials in the ***Trujillo*** case had actually put into effect their decision to utilize the student newspaper solely as an instructional tool and not as a forum for student expression, it is quite possible that the court would have upheld their choice as a legitimate exercise of the power of school officials to prescribe the content of courses in the curriculum.[149] However as the case points out, once the publication ceased to function in the manner originally designated, and commenced to serve as a forum for student expression, then the administration lacked the power to qualify the exercise of the students' right to free press.[150] The labeling of a student publication as one thing, when in fact it is clearly something else, simply in order to exercise censorial power over it, will be subjected to close scrutiny by the courts. There is a "heavy presumption against its constitutional validity."[151] The court must make certain that the label is not being used as a subterfuge merely to deny First Amendment rights.[152]

Obviously, there is a strong presumption in favor of freedom of expression on college campuses.[153] The university and its students invite nothing but legal difficulty by allowing the form and status of student publications to remain loose and fluid. The ***Trujillo*** case should be lesson enough that the organization and status of student publications should be well-defined, widely understood, and ***tightly*** adhered to. The university cannot afford legitimate confusion and disagreement about the status and function of a school-sponsored publication for, in that circumstance, the courts will decide the matter for them.[154] This is not to say that a university cannot change a publication from one type and form to another. Clearly they can. But the change must be clear-cut, and ***fully*** executed.[155]

The ***type*** of support and supervision supplied by the university is

unimportant, so long as it is not applied in a discriminatory fashion or used as a censorship device. Thus, a university may insist on the prior submission of all, or only ***legally*** dangerous (***legal*** libel and obscenity or anything likely to disrupt the campus) material, but it ***must*** have ***precise,*** well-publicized standards and ***timely*** procedures for the evaluation of this material and a mode for appealing adverse decisions. Most importantly, these standards and procedures must not operate as a direct—or indirect—form of censorship. They must not "chill" constitutionally protected speech.

Legal Consequences Resulting From the Use of the Institution's Name

When a student publication achieves true independence from a college or university, and in some cases when two or more publications on the same campus compete over title designations, the "right" to use the institution's name may come into question. Obviously, the use of the university's name or other materials which reflect upon the university, such as the university's crest, do cause the viewer to associate that material with the institution alluded to. This does not always carry with it strong intimations of legal liability, but it can lead to confusion as to the sponsorship of certain materials and to an unwilling assumption of risk or liability on the part of the institution whose name is used or represented.

Unfortunately, the case law in this area is quite unsettled. It is clear, for example, that one institution may not adopt a name that is the same, or substantially the same, as that of another institution which has been operating in the same area for some years and which has a reputation to protect. And this is the case even though the name may actually involve only words which are geographical or generically descriptive and therefore are not trademarkable, just as long as a substantial chance for confusion might exist.[156]

It is also evident that a university may protect from outside use a trademarkable item to which it has previously held exclusive rights. In the case of ***Roberts*** v. ***Notre Dame*** the manufacture and sale of school rings by a jewelry concern was enjoined by a university which had previously been the sole manufacturer and seller of its ring design.[157] Likewise, Cornell University in New York was successful in causing a baking company to remove a pennant bearing the word "Cornell" from its bread wrappers, although it was not successful—and indeed appeared to acquiesce— in the use of the word "Cornell" in the subsequent marketing of the bread.[158]

In similar circumstances, however, Yale University was *un*successful in attempting to have the word "Yale" removed from a sign reading the "Yale Motor Inn." The court in this case indicated that it was unlikely that the public would be deceived by this representation.[159] In a similar case, the University of Notre Dame was

unsuccessful in suppressing a film which represented its football team in a humorous, even ridiculous, fashion. Again, the court based its conclusion on the fact that an ordinary person would not confuse the representations in the film with the actual University of Notre Dame in Indiana.[160]

One learns from these cases that universities have the right to protect the use of their name in some circumstances, but not all. The arbiter of the situation seems to be the difference between the ***possibility*** of confusion and the ***likelihood*** of it.[161] Whenever the public is likely to be confused, misled, or deceived as to the university's role as sponsor, supporter, or endorser of a product or publication which bears its name or imprimatur or an indistinguishable name, the university will have the right to enjoin its use or, in the alternative, to license it.[162] But, what constitutes a confusing representation is left uncertain.[163] Why the public would not be able to distinguish the university's non-sponsorship of a baking company, for example, while it would be able to distinguish the nonsponsorship of a motel is hard to know, particularly since some universities operate overnight facilities for their guests, but few market their own bread.[164] Indeed some courts have held that the use of the ***same*** name, on occasion, does not lead to substantial confusion.[165] On the other hand, some courts have enjoined the use of terms that were only ***substantially*** similar where the intent to deceive emerged.[166] But this result usually was obtained only when ***actual*** confusion existed.[167] It would appear then that it is a factual matter whether the use of a university's name constitutes infringement of its sole proprietorship, and whether its approval or acquiescence needs to be obtained before its name or trademark can be used.

In point of fact, however, it is the university's ***obligation*** as well as in its best interests, ***if*** it becomes aware that its name is being used in connection with products which it does not sponsor, to either enjoin the use of its name or insist, as a ***quid pro quo***, that a disclaimer be published with regard to its relationship to the product. This is, of course, most fundamental when the publication is in no way connected with the university, such as in the case of a truly independent student publication which continues to use the university's name. But, it is also desirable in the case of a campus publication where the university lends its name and sponsorship, although it has no influence or control over the material that is printed therein. Since, in the later circumstance, the use of the university's name may imply something more than the lack of control which in fact exists, a disclaimer with respect to this fact should be clearly printed in every copy.

It should be equally clear from these cases that whenever the university is, or is likely to be, injured by the representations of persons using its name, and where its sponsorship and control are

not involved, that it has the affirmative duty to disclaim publicly any responsibility for the organizations making these representations. That is to say that even where such disclaimers are printed, and especially where they are refused before any injunction might be obtained, the university should take active means to acquaint the public with its lack of connection with publications which might bear its name or a variation of its name. And, in the case of student newspapers which use the university's name or trademark, whether they be campus publications or truly independent papers, the university should enter into a formal relationship with them in order to ensure that its name is used only in a legally defensible posture.

Where both disclaimer and licensing techniques are used by the university it is least likely that it will be wrongly approached for misrepresentation or have to sue for the wrongful use of its name.

Responsibilities of the Campus Press

As Mr. Duscha points out in his article, ***supra,*** college publications have a number of responsibilities to a variety of consumers; students, faculty, administrators, regents, alumni, and parents, to name just a few. But these consumers will disagree as to what those responsibilities are and as to whether the publication has met them. Mr. Duscha analyzed these responsibilities in some detail; his work will not be repeated here. However, a few more things need to be said or, at least, put into perspective, as an introduction to this section.

Beyond their obvious generic responsibility to "inform, educate, and entertain," college-sponsored ***campus*** publications (as opposed to "house organs" and independent student newspapers) have an obligation to be as responsive as possible to the legitimate interests of all major audiences. If there are several campus publications, they may divide this responsibility. But where there is only one, it has the ***responsibility*** to be comprehensive; not just the private enclave of a single editor or small group of editors. Although the publication may be a ***student*** newspaper, it is a campus publication. The publication's leadership has the ***responsibility*** to become informed about its readership. This will give them the perspective they need to approach their job responsively. They have the ***responsibility*** to present a balanced response to the interests and tastes of their readership; usually in the order of the magnitude of interest. The editors cannot assume that everyone finds interesting what they find interesting. Since they usually have a captive audience to begin with, one which has prepaid for the publication through a fee or grant of some sort, and since institutional restrictions on student authors are extremely limited, as has been pointed out, it would be *ir*responsible to accept the money and obligation under the guise of being a ***campus*** publication and then devolve into the private enterprise of a small group of wilful editors. It is not censorship for the institution

to draw up rules which require the student publication which it sponsors to respond generically to the job for which it was created and is being maintained.

Full and fair coverage of all newsworthy items and a distinction between opinion and fact are also ***responsibilities*** of the campus press. In their classrooms colleges do not teach that research which contradicts arguments can simply be ignored. Nor do they teach that opinion may be substituted for fact. There is no reason then why campus publications should be allowed to blur the distinctions which the college attempts to instill in the classroom next door. The ***responsibility*** for scholarly performance does not end with the classroom.

Although, as Mr. Duscha suggested, university campuses may be the "cutting edge" of new ideas, that does not mean that every wild idea ought to appear in print. The campus press has the ***responsibility*** to use good judgment in what it prints, whether its publication standards are written or unwritten. If campus publication offices are the closest thing most universities have to training grounds for journalism careers, then they should not sink into bloody street brawls with university administrators. Aside from the subject matter of campus publications (which can't be censored), the press has the ***responsibility*** not to present its arguments in language which is calculated to embitter (although to shock is occasionally desirable). Campus publications should expand the writer's and reader's lexicon, not shrink them. The point of the article will not be well made if the reader is alienated by the first line. Campus newspapers have the ***responsibility*** to ***communicate.*** And it seems reasonable to conclude that the quality of communication on college campuses should be higher– both in form and content–than elsewhere in the society.

Perhaps every institution ought to draft some standards with regard to the scope of their publications–their responsibility to communicate to and for the community–and with regard to minimum journalism standards to be met therein. So long as these standards are used as quality controls rather than arbiters of subject matter, they do not constitute a prior restraint on expression.[168] These standards would vary from campus to campus, of course, especially as regards coverage, according to the size, interests and resources of the various schools. But they would produce a quality check–usually lacking now–which might be helpful to everyone.

Appeal and credibility in the market place, of course, are the ultimate tests of newspaper quality. But these are removed for most student publications because they are sustained by fees, direct grants, and advertising revenues. The consumer seldom gets to vote his approval or disapproval with his pocketbook. Under these circumstances, it is doubly important that the newspaper prove to the community which supports it that it is responsibly meeting the

obligations it was created to fulfill.

In addition to the above, which might be called ***journalistic*** responsibilities, campus publications have certain other responsibilities of a ***legal*** nature. Among these are the ***responsibility*** to avoid libelous, slanderous, lewd, obscene, and pornographic words and material, and "fighting words," or other enticements to violence. The remainder of this section will be devoted to a discussion of ***legal*** responsibilities, which should be added to the journalistic responsibilities discussed above.

The law requires, for the moment at least, that newspapermen divulge, when subpoenaed by a grand jury, information and sources of information gathered pursuant to a news story—some of it "confidentially"—under threat of being placed in contempt. The issue is known as "newsmens' privilege," and there are at least two recent cases directly in point: ***United States*** v. ***Caldwell,***[169] (U.S. Supreme Court, 1972; involving a reporter for a general-circulation newspaper) and ***State*** v. ***Buchanan,***[170] (Supreme Court of Oregon, 1968; involving the editor of a campus newspaper). There have been a number of similar cases since,[171] but they have all turned on the holding in the ***Caldwell*** case. (Surprisingly, since the ***Buchanan*** case antedated ***Caldwell*** by more than four years.)

Of course, the issue was not original with ***Caldwell.*** It has been debated before (witness ***Buchanan***). But the ***Caldwell*** case, and its companions,[172] brought the matter squarely before the United States Supreme Court. A great many newsmen hoped for a decision favorable to themselves from that body. Consequently, there was an air of quiet anticipation while the ***Caldwell*** appeals were pending. Now that the Supreme Court has ruled against them (the holding in ***Caldwell***), the press is pushing feverishly for a legislative remedy—or so-called "shield law."[173]

Newsmen contend that they are successful in obtaining news about certain subjects: the Black Panthers in the case of ***Caldwell;*** marijuana users in the case of ***Buchanan*** and crime and corruption in still other cases, because they can protect the confidentiality of their news sources. If this confidentiality is breached, particularly as the result of a grand jury subpoena, newsmen contend that their sources will "dry up" and these "inside" stories will not come to the public's attention. They see this ruling of forced disclosure as having the long-range effects of "chilling" the exercise of freedom of the press as guaranteed by the First Amendment.[174] So far the courts have not agreed with them.

Although common law has traditionally observed the right of confidential (or "privileged") communication between priest and penitent, husband and wife, doctor and patient, attorney and client (all under limited circumstances) it has, for the moment at least, refused the same right or privilege to newsmen in their dealings with "confidential" news sources. Newsmen are now seeking protection

through state and national legislation. They may be successful. If they are, there is no reason why the law won't apply equally to all ***bona fide*** journalists, including ***campus*** journalists (unless, of course, they are specifically or generically excluded by the terms of the law, a court ruling, ***etc.***). (It is worth noting at this point that a number of states already have such "shield" laws.[175] And it can be assumed that their terms apply to student journalists as well as other journalists, unless there is something in the law to exclude the former.)

At the present time, particularly in light of ***Buchanan,*** the law with respect to student journalists seems perfectly clear: It is their ***legal*** responsibility to disclose information when subpoenaed by a grand jury—even though that information may have been obtained on a "confidential" basis. Failure to comply may result in contempt, a fine, and even incarceration. Under these circumstances it is somewhat illusory to promise timid news sources "confidentiality." Another legal responsibility of school-sponsored student publications is the responsibility to permit access to the publication on a non-discriminatory basis, even though that access is only in the form of "editorial advertising."[176] The two recent cases directly in point are ***Lee*** v. ***Board of Regents of State Colleges,***[177] (involving a university newspaper) and ***Zucker*** v. ***Panitz,***[178] (involving a high school newspaper). These cases hold unmistakably that where a student newspaper accepts advertising generally, it may not discriminate against the ***content*** of that advertising (provided that the content does not involve ***legally*** unprotected speech). Note that in both cases the newspapers in question accepted other forms of advertising, and attempted to exclude the plaintiffs' advertising solely on the basis of its content. Both courts seemed to recognize that a newspaper could refuse to accept ***all*** forms of advertising, as a matter of policy. But, where it accepted ***some*** forms of paid advertising, it could not discriminate against others on the basis of the message to be communicated.

Presumably the same rule would apply to letters to the editor, although in the latter case ***reasonable*** insistence on literary merit (if not discriminatory) would probably be allowed. There are no cases directly in point. Literary and intellectual merit may also be demanded of submissions for general publication (assuming the newspaper accepts unsolicited manuscripts for publication). These manuscripts may be rejected for lack of merit or for lack of space, but the requirements of intellectual merit and space cannot be used as a subterfuge for the censorship of ideas or content.[179]

Although there is no ***legal*** obligation to be responsive to the consumers of a school-sponsored student publication, there is a certain ***moral*** obligation to them implicit in the school's funding of the activity. Despite the fact that this obligation cannot be enforced by individual consumers, as by withholding compulsory student

fees,[180] it seems likely that the power of the administration to prescribe curriculum, ***etc.,*** which has been repeatedly recognized by the courts,[181] also gives them the power to shut down publications which are clearly unresponsive to their consumers.[182] This would be particularly the case where some standards for measuring responsiveness existed. Although the court would undoubtedly be willing to review this situation on the suspicion of censorship,[183] or a "dragnet" regulation which had the effect of suppressing or "chilling" protected speech,[184] the school's administration would be upheld if its regulations went to the ***form*** of the publication only, and not its substance. The administration's decision would be especially defensible if there were pre-existing publication standards and a clear breach of them could be shown. The university has the power and authority to draft ***reasonable*** regulations with regard to curriculum and school-sponsored activities, and to punish deviations therefrom.[185] This does not mean that institutions may force student publications to adopt or support particular editorial positions, but it does mean that they can effect some controls over the scope of the publication through written rules and agreements.

While freedom of speech and the press have traditionally been protected from government interdiction by the First Amendment, there are some forms of speech and publication which are not entitled to its protection. Courts have traditionally held that the First Amendment does not extend to those publications which are libelous, slanderous, obscene or pornographic. The reason for this is that these forms of publication are considered unworthy of protection from an educational or informational point of view.[186] Obviously, campus publications have the responsibility to avoid the publication of libel, slander, obscenity or pornography.

Libel is generally defined as a ***false*** and ***malicious*** publication against an individual, whether it appears in print, writing or a picture, with ***intent*** to either injure the reputation of that person or expose him to public contempt and ridicule. In most jurisdictions, wherever such a statement is shown to be ***false,*** malice and intent may be ***inferred.*** However, when this intentional tort is defined by statute, the statutory requirements naturally govern.[187] Whether a person may legally maintain an action for libel or slander may depend upon the public notoriety of that person. Thus, where a public official is libeled, it must be shown that the statement was ***false*** and made with ***actual malice*** in order to hold its author liable.

New York Times v. ***Sullivan*** is the leading case.[188] In that case the United States Supreme Court held that a state could authorize a civil suit for defaming a public official ***if*** the statement were both false and made with ***actual malice,*** that is with ***knowledge*** that it was false or with reckless disregard for its accuracy. In a criminal prosecution for defamation the ***Sullivan*** requirements of falsehood and actual malice must also be present before the defamation of a

public official concerning his official conduct can be punished.[189]

In the case of ***Rosenblatt*** v. ***Baer,*** the Supreme Court indicated how far into the ranks of government employees the "public official" designation would extend for purposes of the ***Sullivan*** rule. The Court said: "It is clear, therefore, that the public official designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of government affairs."[190]

In the ***Butts*** case, four Supreme Court justices articulated their test for situations which involved the defamation of a public figure, ***not an official.*** For them a public figure could recover for defamation only if there was a "showing of highly unreasonable conduct [on the part of the defendant] constituting an extreme deviation from the norm of responsible publishers."[191] This is quite a subjective standard considering the range of publications available today.

In the recent Supreme Court case of ***Rosenbloom*** v ***MetroMedia,*** the Court went as far as it has gone to date in applying the ***Sullivan*** doctrine.[192] In ***Rosenbloom*** the Court held that even when a ***private*** person is involved there can be no recovery for defamation unless the ***Sullivan*** requirements are met, insofar as the objectionable communication involves a subject of "general or public concern." The plaintiff in this case was a peddler of "girlie" magazines. Unfortunately, the Court did not indicate just what "general or public concern" was involved in the peddling of "girlie" magazines, but indicated that it would have to be decided on a case by case basis. With the loss of Justice Black from the Court, however, and with the addition of two new justices – neither considered to be a civil libertarian – there may be a retreat from the ***Rosenbloom*** holding and a general tightening on the issue of privacy.

None of the libel cases cited above involves college newspapers, of course, But there is no reason to believe that the results would have been different if college papers had been involved. That is to say that the libel rules which have been applied to general-circulation newspapers would, at this writing, appear to apply to college publications as well.

A case which may have greater relevance to the topic is ***Pickering*** v. ***Board of Education,*** a 1968 case from the United States Supreme Court.[193] In this case the Court held that a school teacher who published an article criticizing the Board of Education could not be fired unless the article was published with falsehood and ***actual malice.*** This is essentially the ***Sullivan*** rule. However, the Court acknowledged that if, after publication, the teacher was not able to function effectively and her continued presence was disruptive of the educational process, then she may be subject to dismissal. Without much doubt the result would have been the same if the case

had involved a student- author/publisher instead of a teacher.[194] There is a difference, however, between dismissal for libel and dismissal for "disruption of the educational process."[195] The latter issue will be discussed at a later point. For the moment, at least, the campus rule with respect to libel – whether it involves students or teachers – seems well-established as a result of the ***Pickering*** case.

Student newspapers have always been rather outspoken in their criticism of public and school officials. While it is clear that there are severe constitutional limitations on a school's prohibition of these articles and the sanctions they may impose for publishing them,[196] a different question arises when these statements border on the libelous. In these cases, a college administrator is presented with a complicated dilemma. If he does not exercise some control over potentially libelous material, the school may be subjected to liability for defamation. On the other hand, if he exercises or attempts to exercise too much control, he may be challenged for violating a student's constitutional right to free expression. The problem is further complicated by the administrator's difficulty in ascertaining under current Supreme Court rulings whether the student material is libelous or not. Clearly the administrator is somewhat protected by the holdings, through ***Rosenbloom,*** which state that virtually no degree of criticism of public officials or figures, or matters of public concern are libelous. But he must be cautious of the fact that the Supreme Court's composition has shifted toward the conservative side, and any new ruling may enunciate a standard less liberal than that in the ***Rosenbloom*** case.

As to the case law concerning a ***university's*** liability for defamation contained in a student article – as distinguished from the ***student's*** liability therefor – it is sparse indeed. No cases have been found exactly in point. The first obstacle to be hurdled, of course, is whether a ***public*** college or university is subject to suit at all. Since a public college or university is technically an arm of the state, and the state has traditionally been protected from suit by the doctrine of "sovereign immunity," the institution ***may*** be protected as well. Today, however, the sovereign immunity doctrine has been abrogated or limited in many states by constitutional amendment, statute or judicial decision. It is necessary, therefore, to examine the law of the particular jurisdiction in which one's school is located in order to determine whether a public institution may be sued in that jurisdiction, and under what circumstances.[197]

If a public college or university is subject to liability for the torts of its students, the basis for that liability will normally be the failure of the school to exercise proper control over the acts of its students.[198] In tort cases against a school wherein the theory was negligence, the courts have generally required that it be shown that school authorities had some sort of notice that student activities were likely to produce injury and neglected to intervene in the

performance of those activities.

In the ***Rubtchinsky*** case, for example, the court held that, although the college had control over student association activities, it was not required to provide supervision for organized extracurricular activities unless such activities were so ***inherently*** dangerous that college authorities were under actual or constructive notice that injuries could result.[199] Applying a similar rationale to libel suits involving student publications, it would seem that sponsoring institutions could not possible be found liable unless the libel were a continuing one.[200] A student newspaper is certainly not an inherently dangerous activity. Moreover, school authorities can constitutionally oversee student publications only to a limited extent. Since the Supreme Court has repeatedly held that prior restraints to publication or speech which amount to censorship are constitutionally impermissible,[201] it would be inconsistent and unjust to penalize a college for failing to do what it could not legally do. In point of fact, however, colleges and universities are rarely, if ever, sued for the potentially libelous statements of their student publications.

However remote the possibility of a college or university being sued for libelous statements published in their student newspaper, it is still advisable that a distinct disclaimer be inserted in the publication indicating that the views expressed therein are not those of the school, but rather those of the named student author, editor, or board of editors. Disclaimers of this sort are not complete barriers to the liability of the school, of course, but they are ***some*** evidence to the reading public that the school does not influence or control (or accept responsibility for) what is published in its student newspaper. Courts of law may thrust this responsibility upon the school, however, so long as it sponsors and supports student publications. Whether or not the ***school*** is held liable for the libels appearing in its student publications does not mean that the student author/editor/publisher responsible will be exempted from punishment therefor.

In the ***Norton*** case, for example, a federal circuit court held that literature distributed on a state university campus urging students to "stand up and fight" and calling school administrators "despots" and "problem children" was not privileged under the First Amendment as an expression of free speech, but "was calculated to cause a disturbance and disruption of school activities and to bring about ridicule of and contempt for school authorities." The suspension of the students who produced and distributed this literature was not held to be improper.[202] Unfortunately, the ***Norton*** case does not reveal much about libel and obscenity on the college campus, since the result seems to have hinged more on the "threat" of "disruption" to the school's educational processes. As noted before, there is a difference between suppressing speech which is libelous and that

which is disruptive. Moreover, the publication involved in ***Norton*** was not school-sponsored. It was privately published by the student-plaintiffs. Nevertheless, the two-to-one ***Norton*** decision is one of the few available which shed any light on the issue of campus libel.[203]

Slander, of course, is ***oral*** defamation.[204] That is, to libel or to slander a person is approximately the same thing except for the medium of expression. From all that the author can discover, the same laws and legal yardsticks apply to both offenses. Wherever a student or student publication might be accused of libel they might equally be accused of slander and the same legal guidelines would be applied to determine liability for both.

The issues of obscenity, profanity, and pornography are much the same as those of libel and slander. It is clear, for example, that the First Amendment does not protect expression which is ***legally*** obscene, profane or pornographic any more than it protects expression which is legally libelous and slanderous. The state has a legitimate and judicially recognized interest in protecting the public morality.[205] Unfortunately, what constitutes "obscenity," "profanity," and "pornography" is a little more difficult to describe than what constitutes libel and slander, and the United States Supreme Court has provided not one test, but several.

In the leading case, ***Roth*** v. ***United States***, the court indicated that literature would be obscene when "to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."[206] The sheer subjectivity of this test should make the difficulty of its application apparent. Note, however, that the test is a relative one, tied to the perceptions of "*average*" persons, ***"contemporary community*** standards," and "dominant" themes of material "as a whole." Obviously, the standards may vary according to area, groups of persons, and changing public mores.

Several years after the ***Roth*** case the Supreme Court added to its obscenity test by declaring that in order to be legally obscene a publication had to possess the quality of "patent offensiveness." In order to be "patently offensive," the material had to go "substantially beyond customary limits of candor" in describing materials or events.[207] Finally, in 1966, the Court announced its first reasonably comprehensive test for obscenity. In that year the Court said that in order for literature to be obscene "three elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value."[208] In a companion case, the Court went further to state: "Where the purveyor's sole emphasis is on the sexually provocative aspects of his publication, that fact may be decisive in

the determination of obscenity."[209]

These tests may or may not serve one well in judging whether materials printed in a campus publication are or are not "obscene." Obviously, "ordinary" college newspaper obscenity has a long way to go in order to meet these tough legal standards. If they do, however, the Supreme Court has pointed out that the protection of obscenity from *previous* restraint (censorship) is not absolute.[210] Nevertheless, "[any] system of prior restraints . . . comes [into court] . . . bearing a heavy presumption against its constitutional validity."[211]

A question might be legitimately raised at this point, however, whether, in light of the *Roth* test, a different standard of obscenity applies on college campuses than applies to the society in general. The Supreme Court has already recognized that a different set of obscenity standards applies to juveniles than to adults.[212] And this posture has been followed in lower court cases involving educational institutions.[213] The Supreme Court has also recognized a separate obscenity standard for at least one "clearly defined deviant sexual group."[214] It is clear, therefore, that the Court is willing to define variable obscenity standards for various groups and types of persons. One is left for the moment to wonder whether separate standards will be devised for college campuses, based on the fact that they constitute a unique and "captive" audience—which most campus publications usually have—and whether, that standard will be higher or lower than the standard for adults in the rest of society.

There is good reason to argue that it ought to be lower since well-educated persons ought to be more resistant to the enticements of obscenity, profanity, and pornography, or for that matter libel, slander and "fighting words," than poorly-educated ones.[215] On the other hand, there is good reason to argue that obscenity standards should be higher on the college campus than in the rest of society, insofar as communications in an educational atmosphere should proceed on a higher plane than the bare minimum observed by the rest of society. At least one court has recognized that obscenity is not necessary "to convey a . . . social and political message . . . ,"[216] and has gone beyond that to recognize that the *Roth* test may not be the minimum standard for a college campus.[217] There is a limit to obscenity in a campus publication, of course, but where that limit falls is at present uncertain. For the moment it might be said that obscenity becomes objectionable when it becomes an end in itself.[218]

The interesting sidelight to this obscenity issue is the "subtle form of control" which has emerged as a result of printers refusing to set obscenities in type. Apparently they object on either legal or ethical grounds. Whatever their grounds, it is bound to have its effect on campus journalism, which does not always have the time or budget to search for the compatible printer.[219]

Finally, with respect to obscenity (and other forms of prohibited speech), it should be noted that a student may be punished for violating a school rule prohibiting ***e.g.,*** "indecent conduct or speech," even though his behavior is not so grave as to have brought him within the legal rule concerning obscenity which operates in the general society.[220] Colleges and universities after all have been given the authority to draft ***reasonable*** rules and regulations with regard to student discipline.[221] These rules and regulations, however, cannot be used as a subterfuge to control protected expression.[222] Nevertheless, ***persistence*** in a proscribed form of behavior may create an entirely ***new*** issue of "disruption," (rather than "freedom of expression"), which is punishable.[223] Unfortunately for this analysis, there are not many court cases dealing with obscenity, profanity, and pornography in college and university publications.[224]

The cases which are available, ***e.g., Norton*** v. ***Discipline Committee of East Tennessee State University,***[225] and ***Channing Club*** v. ***Board of Regents of Texas Tech University,***[226] and ***Goldberg*** v. ***Regents of the University of California***[227] all muddy the obscenity issue with material regarding "disruption of the educational process," and the cases are usually decided on the latter grounds. Consequently, the best cases which we have on this subject deal with student publications at the secondary school level. In a case involving two high school students, ***Baker*** v. ***Downey City Board of Education,*** suspension from school as a result of distributing outside school grounds a publications containing the words "fuck" and "bullshit," two drawings of nude young ladies and two erotic poems was upheld by the court.[228] The court found that the action of school authorities was a reasonable exercise of their powers of discretion in maintaining an educational atmosphere and enforcing statutory provisions making "profanity and vulgarity" grounds for suspension. Unfortunately, the court did not indicate its yardstick for pornography and obscenity since it ruled that "neither 'pornography' nor 'obscenity', as defined by law, need to be established to constitute a violation of rules against profanity and vulgarity. . ."[229] The court said, however, that these students were not dismissed for positions which they took against school administrators and the Vietnamese War, but because of the profane and vulgar ***manner*** which they chose to express their views and ideas.[230] In other words, the plaintiffs were allowed their First Amendment rights to free speech but were not allowed the suspension of decency in its expression. The court also recognized that the right of high school students to express profanity and obscenity might be more strictly curtailed than the same conduct on the part of college students or adults. Finally, there was evidence of a considerable distraction of the school's operation as a result of the publication, thus eliminating the application of the pure ***Tinker*** rule.[231]

In the ***Goldberg*** case, a college student was suspended for obscenities expressed in writing and utterances.[232] The court dismissed the student's objection to his suspension because in their minds it did not constitute an impairment of his First Amendment rights. Once again, however, the suspension resulted from a violation of university rules, not as a clear consequence of uttering or publishing obscenities. The court disposed of the case in part by saying that the university had the power to formulate and enforce rules of student conduct and that both the development of the rule and the suspension of the student according to the rule were within the reasonable authority and power of the university. In both cases the student was dismissed pursuant to a disciplinary rule rather than for the violation of any legal rule of obscenity, profanity or pornography. Thus, one is not left with a clear conception of what constitutes these offenses on a college campus as distinguished from what constitutes a violation of the rules of propriety. It is important to observe, however, that it was not the right of free speech or publication which was being challenged in either case. In both cases the court allowed that the ***objects*** of the protest were legitimate, but they objected to the profane, vulgar and obscene ***means*** employed to achieve those objects. It was the ***means*** employed which made the speech unworthy of constitutional protection.

In a third case, a Michigan court enjoined the suspension of a high school student for having in his ***possession*** a tabloid publication containing certain four-letter words. Among other things the court found that the publication also contained ***serious literary*** material. They also found that the school's library held other books and magazines which contained the same four-letter words. The court could not resolve the inconsistency of suspending a student for possessing a publication when the objectionable parts were equally contained in the school's library.[233]

The only reasonably "pure" college obscenity case, ***Papish*** v. ***Board of Curators of University of Missouri*** (that is, uncontaminated by a "disruption" issue), was considerably influenced at the lower court level by "pandering" to "minors" (an issue not normally present in college cases),[234] and was upheld on appeal on the basis of simple "rule violation." The appeals court expressed no opinion on the issue of obscenity, although technically speaking, that would have been necessary in order to find that the plaintiff has been "pandering."[235]

Clearly then, ***legal*** obscenity, profanity, and pornography might be the object of legitimate censorship or suppression of college publications, and is not protected by the First Amendment. It is difficult to tell, however, just what degree of obscenity, profanity, and pornography would be allowed in a campus publication other than to say, by virtue of the ***Vought*** case, ***supra,*** that it would be compared to local school standards. Second, it is apparent that a

school may legitimately ***legislate*** a higher standard of decorum for its students, and failure to meet that standard could result in their suspension or dismissal, even though the standard lies above what is popularly conceived to be the standard of obscenity, profanity and pornography. Third, obscenity standards applied in a high school may be somewhat more restrictive than those applied in a college, consistent with the difference in maturity between the reading publics in both types of schools. Finally, it is evident that no danger of "disruption" need exist or be threatened in order to make obscenity, profanity and pornography legally actionable on college campuses.

The final responsibility of the campus press to be considered here is the responsibility not to use words which would intentionally incite readers to violence or crime. Words or communications of this description – so-called "fighting words" – have long been held not to be protected by the First Amendment.[236] As the test was applied in the society at large, these words would have to "create a clear and present danger" of a "substantive evil" before they could be suppressed as unprotected speech.[237] This test is obviously a little extreme for the college situation, and so a lower standard of protected speech was announced for the school environment. As expressed in ***Tinker*** v. ***Des Moines Independent Community School District***, this standard was speech which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others. . . ."[238] As will be explained, this standard has been adopted by an immense number of courts which have considered the student – free speech issue since the ***Tinker*** decision was rendered.

Of course, courts do "not deny that [the state] has authority to minimize or eliminate influences that would dilute or disrupt the effectiveness of the educational process as the state conceives it."[239] And they recognize that no "specific regulations" are necessary in order to discipline students for "circulation of false and inflammatory literature. The university [has] inherent authority to maintain order and to discipline students."[240] Of course, "regulation of activity" has to be distinguished from suppression of it,[241] but "school authorities may prevent distribution of printed material 'during classes and at other times and places where such distribution is ***reasonably*** thought to be disruptive of normal school activity'."[242] Although courts will normally not review a school administrator's decision with regard to what activity would "materially and substantially disrupt" the educational process, they have the duty to do so when an impermissible restriction on expression may have been practiced.[243]

In ***Pickering*** v. ***Board of Education***, for example, the Supreme Court held that the mere making of allegedly "false" statements was not enough to justify the dismissal of a teacher where there was no showing that the statements were harmful to the operation of the

school. The court acknowledged, however, that if the statements *had* been disruptive of the school's operation or the teacher's effectiveness, the teacher could have been dismissed.[244] "[One] may not constitutionally conclude from the mere making of a false and inflammatory statement that it creates, in and of itself, the requisite substantive evil of material interference with the normal operations of a university which is necessary for the proscription of free speech."[245] One is left to conjecture, however, just what degree of disruption constitutes a "material and substantial" disruption. The oft-quoted *Tinker* case is not much help in this regard, since the "disruption" caused in that case by the wearing of black arm bands *clearly* was not "material and substantial."[246] In other cases, on almost *identical* facts, the courts will find the presence or absence of "material and substantial disruption" without ever indicating why the disruption was "material and substantial" in one case but not in the other.[247]

One court has suggested that a material and substantial disruption of the educational process is likely "only when there is . . . a *substantial* distribution of written material. . . ."[248] This is not necessarily so, but it does provide the beginnings of a yardstick. Still another court has said that "underground newspapers which engage in attacks on school administrators and their policies would seem to affect school discipline more directly."[249] Finally, several courts have seemed to recognize that *persistence* in the distribution of potentially disruptive literature may raise the degree of disruption to the "material and substantial" level.[250] It should be noted, however, that material and substantial disruptions caused by forces *antithetical* to persons legally attempting to exercise their right to free expression would not normally justify a curtailment of legitimate speech.[251]

In recent years, courts have become rather tired of policing freedom of speech on campus, however. As one court noted, "the cases in the area of First Amendment rights in the school setting are now so numerous as to defy any attempt at digesting . . . them. Indeed, the welter of such cases in which a vociferous child runs right from the schoolhouse door to the courthouse door with his literature in hand has grown in recent years beyond all proper proportion. . . ."[252] This Court is not about to declare the . . . [school administration] incapable of carrying out . . . [its] task any more than this Court is about to take over the running of the schools themselves, however much certain elements of the school patron population would like to see that unlikely event come to pass."[253] In the future there may yet be a lowering of the *Tinker* standard and an elevation of student press responsibility to insure that freedom of expression is merely "not disruptive" of the school's educational process.

Obviously, the rule is still formative. A much greater body of case

law will be required before the point of "material and substantial" disruption can be set with any degree of certainty.

Consequences of Selection and De-selection of Student Newspaper Personnel

Any public college or university which sponsors a student-run newspaper must necessarily be faced with the problems of selecting, and on occasion de-selecting, student personnel. Generally speaking both processes are assumed to be fair and dispassionate unless evidence is submitted to the contrary. Neither process may be used, however, as an indirect means of censorship. That is, a university may not attempt to achieve editorial control over its student publications by manipulating the selection of student editors, or by threatening uncooperative editors and writers with de-selection.[254] It is legitimate, however, for an institution to stipulate an academic requirement as a prerequisite to holding an editorial or writing post on its student newspaper. But, if eligibility requirements are based solely on "playing ball" with college officials, it would be a violation of that person's right to free expression and an indirect attempt at censorship.[255] Therefore, it is extremely important that each institution which sponsors a student newspaper establish procedures for the selection of principal personnel and for the de-selection of the same personnel for "cause," procedures which are fair to the individual and to the institution and do not infringe a student's right to free speech or, for that matter, ***due process.*** The old argument that an opportunity to participate as an editor or writer on a student newspaper is a ***privilege*** rather than a ***right,*** and the granting of that privilege could be conditioned upon the forfeiture of the right to freedom of expression, seems now to have lost its validity.

As recently as a decade ago, it was traditional constitutional law that whereas the granting of a right could not be conditioned on the forfeiture of a right (since the person had a right to both, rather than to one or the other), the granting of a privilege could be conditioned upon the forfeiture of a right. This was true insofar as there was no entitlement to the privilege being sought and it was a matter of individual determination whether the forfeiture of the right was acceptable in order to gain the privilege. The courts have subsequently found this distinction to be irrelevant. In their opinion, the adoption of an "unconstitutional condition" as a prerequisite to obtaining a privilege is illegal. Furthermore, the courts have recognized that "equal protection" applies to this area of activity.[256]

While the courts are clear in their holdings that a university has no duty to sponsor a student newspaper or to allow public use of its facilities, once it has decided to engage in these activities, it must make them available to all persons on an equal basis. One is reminded again that "[the] state is not necessarily the unrestrained

master of what it creates and fosters."[257] And the university is not necessarily the arbiter of what appears in its student publications. It would be wrong, therefore, for the university to ***artificially*** discriminate between students in terms of their eligibility to compete for open positions on the newspaper staff. That is not to say that ***reasonable*** conditions, such as a sufficiently high academic average or the successful completion of a basic journalism course, may not be required.[258] It is suggested, however, that universities carefully draft and broadly publish the prerequisites for, and procedures by which membership on student publications is determined. Further, the university administration should absent itself from direct involvement in the selection process insofar as that is practical. And finally, all constituencies which the newspaper serves, and possibly professional journalists as well, should be utilized in the selection process. This would help to make every student selected for a key position on any publication aware, by virtue of the selection process, that his publication had to serve a variety of constituencies with occasionally disparate views concerning news coverage.

The ***de-selection*** of student newspaper personnel, of course, is a much touchier business. This is so because it usually proceeds against a backdrop of hostility developed because the student-editor in question considers himself to be doing a wonderful job of attacking the administration, while the administration is over desirous of ridding itself of a widely-read gadfly. Where the student in question falls below legitimate academic standards for continuation in the activity, this conflict and issue would probably not arise, and the de-selection might occur with little or no notoriety. Where, however, the student's de-selection is sought due to substandard persormance as a journalist, an element of subjectivity enters the equation. In these circumstances it is terribly important that the university does not have its way at the expense of the student simply because they differ. Standards of performance and eligibility to continue should be clearly articulated and broadly published. Where a student is felt to have fallen below a ***reasonable*** standard of performance, or is guilty of gross misconduct and unprofessional behaviour in his role as student writer or editor, then it is proper and legitimate for the university to proceed to remove that student from his position.[259] That is to say the university is not obligated to retain in a position of influence a person who is ***clearly*** and ***demonstrably*** not performing his responsibilities according to reasonable professional standards. It hardly needs to be said, however, that it is not "unprofessional" or "insubordinate" to merely stand up for one's, and one's publication's, First Amendment rights.[260]

The process of de-selection should be accompanied by the rudiments of fair play and due [illegible]. The accused student should be guaranteed an impartial and [illegible] tribunal; he should receive notice of the charges against him; he should be given an adequate

opportunity to present a defense, including the presentment of witnesses and the cross-examination of witnesses against him; he should have access to a record of the proceeding, and he should receive a hearing and a judgment within a reasonable time after the question of his unsuitability has been raised.[261]

If correct procedures are thoughtfully developed by the university for the selection and de-selection of student newspaper personnel, the author believes that the university will have very little to fear from the allegations of disgruntled parties that these processes have been used as methods of censorship.

Limitations on Free Speech: *Tinker* Examined

In recent years the ***Tinker*** decision[262] has been cited for virtually every student/free speech principle under the sun. The case has the distinction of being a Supreme Court decision, of course, and a fairly recent one. It also has the distinction of laying down in sweeping and affirmative language (rendered by former Justice Abe Fortas) the rights of public school students to express themselves in the school environment. The problem is, unfortunately, that authors have extended the ***Tinker*** ruling so far that it is now being cited to support matters which did not even arise in the original case.

In his very excellent article entitled ***Tinker Distinguished,*** Professor Paul Haskell of Case-Western Reserve Law School, notes that many recent cases have produced holdings at odds with the ***Tinker*** decision, simply because the facts in those cases were substantially different than the facts in ***Tinker.*** Some of the dangers to the school environment which were not anticipated in the ***Tinker*** case, and which allowed for a liberal constitutional interpretation, were present in later cases and made for a much more restrictive determination of constitutional rights in those circumstances.[263]

The most important element in the ***Tinker*** case is the fact that it involved no ***spoken*** communication at all. The case involved the wearing of black arm bands by secondary school students in protest of the United States involvement in the Vietnamese War. Justice Fortas noted that this was akin to "pure speech." It certainly does not compare with the obscene or profane "speech" used in the ***Goldberg*** and ***Baker*** cases, which the courts held was not protected.[264] Secondly, the Tinker case involved students in secondary school, schools which they were obligated by law to attend. Certainly the involuntary attendance of these schools can be distinguished from the voluntary attendance of public colleges and universities. A student ought to be entitled to a broader range of freedoms when faced with an involuntary situation than he might be when faced with a voluntary one. Finally, the ***Tinker*** court enunciated a standard which protected pure speech in the ***absence*** of any clear showing of "material and substantial disruption" of the school

processes which that speech might threaten. Clearly speech which threatens a clear and present danger of a substantive evil must be subordinated to the interest of the commonwealth in protecting its citizens from such disturbances.[265] Thus, a case could be held to fall outside of the ***Tinker*** rule for any of these reasons: speech which was libelous or obscene;[266] speech involving false, seditious and inflammatory statements;[267] and speech which is an incendiary and constitutes "fighting words" which present a clear and present danger of some substantive evil.[268] In this sense the low-key communications of the ***Tinker*** case presented "no contest" as to whether the "speech" would be protected or not.

Although a principle conclusion is usually drawn from the ***Tinker*** ruling – that free expression is protected absent a showing of a clear and present danger of a substantive evil arising from its practice – the author believes the case holds far less than this. It cannot be ignored, for instance, that the speech involved was nondisruptive in any way. Indeed, it was not even an utterance, so it did not involve even a ***limited*** amount of noise. Secondly, it occurred in a public school below the college level. From these two facts alone it must be concluded that utterances, loud or otherwise, and speech in schools which are attended voluntarily rather than involuntarily ***may*** not fall within the ***Tinker*** rule. Finally, it must be noticed that certain forms of speech, ***e.g.,*** libel, slander, profanity, obscenity, pornography, and "fighting words," traditionally are unprotected by the First Amendment, and are not entitled to the protection of the ***Tinker*** rule, since the speech in that case involved none of the foregoing. It is not clear, therefore, exactly what the ***Tinker*** ruling holds. The case did not involve "material and substantial disruption," even though the rule which it enunciated was built almost entirely on it.[269] As one court noted in distinguishing ***Tinker:*** "These children did not urge a riot, nor were they disrespectful to their teachers."[270] The case left the ***degree*** of disruption constituting "material and substantial disruption" almost entirely unelaborated, insofar as it involved virtually no disruption itself. In addition, the ***Tinker*** case involved a prior restraint, or censorship. The school rule provided, as rules in certain other cases have provided,[271] that students shall not perform an act or distribute literature unless it has been previously approved by some school official. Prior approvals, tantamount to censorship, have usually been held unconstitutional as restraints on First Amendment rights.[272] That is to say that unless a "material disruption" is a ***real probability,*** the mere fact that some one may object to the ideas expressed in a publication is not sufficient reason to suppress it in advance.

This approach is known as the ***"Tinker*** forecast rule" because it allows prior restraint of publication only in situations where school officials can "forecast" substantial disruption of school activities as a result thereof.[273] But this "forecast" must be something more than

an "undifferentiated fear or apprehension of disturbance [, which] is not enough to overcome the right to freedom of expression."[274] "It is not required that the college authorities delay action against the inciters until [the disruption has occurred, however] . . . The college authorities [have] the right to nip such action in the bud and prevent it at its inception."[275] The burden of demonstrating that a "material and substantial disruption" could have been ***reasonably*** "forecast" ***and*** was attributable to the speech or publication to be suppressed falls to the institution in cases like this. It must be fully justified before a suppression of student speech or expression will be upheld.[276]

The reader must be cautioned most strongly against uncritical acceptance of many of the conclusions attributed to the ***Tinker*** decision. They arise chiefly from the sweeping language in which the decision was rendered. In fact, the ***Tinker*** case was a relatively simple one, and turned principally on its own unique facts. Nevertheless, its language has been broadly quoted to support conclusions on issues which the ***Tinker*** Court never considered in that case. Indeed, there is more than limited reason to believe that courts have found the ***Tinker*** rule – "material and substantial disruption" of the educational process before free expression can be suppressed – unworkable in the school atmosphere, and will either fashion a less strict rule or redefine the ordinary meaning of the words "material and substantial."[277]

Conclusion

It should be obvious by now that freedom of expression is not an absolute unlimited right. Rather, it is a carefully protected constitutional guarantee which was secured for every citizen by the Founding Fathers. It is not without limitation, however. It has already been shown that it can be limited according to time and place, volume and effect, and even as to content, as in the case of libel and obscenity. Freedom of expression is constantly being submitted to a judicial balancing process in which the parallel, and often competing, rights of individuals to speak, read, and hear are being pitted against the right of government to protect itself from the destructive abuses of speech.

This subtle balancing process, which determines when the rights of the individual and when the rights of the government shall prevail, is indeed perplexing to the layman. Moreover, the question is always solved on the basis of evidence, and it is impossible to imagine, far less discuss, every possible evidentiary situation in which balancing occurs.

An attempt has been made in the foregoing materials to present a representative cross-section of the issues which have confronted the

courts with regard to freedom of speech, freedom of press and the right of the government to curtail them, with the realization that this is incomplete and by no means exhaustive. Ultimately, it will be up to each institution, each student publication, and each editor and writer to balance for themselves the equities of freedom of speech against the right of institutions and societies to protect themselves, in order to come up with the most livable rule for the circumstances which they face. The court does not more and no less.

It is important to realize, however, that there will always be competition between different individuals and agencies in society for the right to free expression and for the opportunity to curtail expression of which they disapprove. This interaction was contemplated by the Founding Fathers, and was deemed by them and by many subsequent thinkers to promote rather than destroy liberty and freedom. The ***anticipation*** of these conflicts and their peaceful and thoughtful resolution is far more helpful to the ends of freedom of speech and the enjoyment of that freedom by all persons than a knee-jerk reaction to offensive and critical speech, which in its impulsiveness would consider denying freedom of speech to ali persons at all times. The university is not ***ultimately*** responsible for every word uttered and every publication distributed on its campus. Neither is every student editor or writer ***completely*** free to express himself.

These are problems which must be worked out between the parties in interest; between college administrators and campus newspapers which are critical of them; between student editors and reluctant printers; between students and students. They are not ultimately matters for the courts to decide. Courts are, at best, pudgy-fingered instruments of justice, and will seldom achieve the advantages to both sides in a controversy that they could achieve for themselves if they would but take the time and approach the controversy in a cool and thoughtful manner. Neither do courts seek this responsibility.[278]

The hopelessness of submitting these campus disputes to courts for their solution is exemplified by a recent North Carolina case, ***Joyner*** v. ***Whiting.***[279] In that case a university president was staunchly opposed to the segregationist leanings of his school's student newspaper. The student editor was equally insistent upon his right to publish what he thought completely free of any restriction from the university. In reaction to the newspaper's refusal to integrate, the university president withdrew financial support and declared it closed. He expressed his willingness to re-establish the publication if it would adhere to reasonable "journalistic standards." The court found that it was within the prerogatives of a university president, as previously mentioned, to decide whether or not his campus should sponsor a student newspaper. Having once made that decision, however, the court said that the president should not have

any further influence over the newspaper. Because the court feared that the president would establish another newspaper when the objectionable policies abated, and would thereby exercise a certain measure of control over editorial and reportorial views, the court found that the best solution was to eliminate the student newspaper entirely, not during the period of the objectional policies alone, but ***ad infinitum***. This happens to be a solution which ***neither*** party wanted. Rather, it was the unhappy solution developed by the court as the only apparent way out of their dilemma.

If these results are the best that can be expected from submitting student free speech grievances to the court, then it is clearly better to work them out at the campus level between the interested parties. If these parties will but plan ahead, and recognize that they have both freedom ***and*** responsibility, then the guarantees of the United States Constitution will be secured for all members of the campus community.

REVIEW OF IMPORTANT CASES.

List of Frequently Cited Cases

Antonelli v. *Hammond*, 308 F. Supp. 1329 (D. Mass. 1970)

Baughman v. *Freienmuth*, 343 F. Supp. 487 (D. Md. 1972)

Blackwell v. *Issaquena County Board of Education*, 363 F.2nd. 749 (5th Cir. 1966)

Brooks v. *Auburn University*, 412 F.2d 1171 (5th Cir. 1969)

Buchanan v. *Oregon*, 250 Ore. 244, 436 P.2d 729 (1968)

Burnside v. *Byars*, 363 F.2d 744 (5th Cir. 1966)

Channing Club v. *Board of Regents of Texas Tech University*, 317 F. Supp. 688 (N.D. Tex. 1970)

Dickey v. *Alabama State Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967)

Eisner v. *Stamford Board of Education*, 440 F.2d 803 (2d. Cir. 1971)

Joyner v. *Whiting*, 341 F. Supp. 1244 (M.D.N.C. 1972); *rev'd*, F.2d (4th Cir. 1973)

Norton v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195 (6th Cir. 1969), *cert. denied*, 399 U.S. 906 (1970)

Papish v. *Board of Curators of University of Missouri*, 331 F. Supp. 1321 (W.D. Mo. 1971) [Papish I], *aff'd*, 464 F.2d 147 (8th Cir. 1972) [Papish II]; *rev'd*, U.S. (1973)

Quarterman v. *Byrd*, 453 F.2d 54 (4th Cir. 1971)

Scoville v. *Board of Education of Joliet Township*, 425 F.2d 10 (7th Cir. 1970), *cert. denied*, 400 U.S. 826 (1970)

Tinker v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969)

Trujillo v. *Love*, 322 F. Supp. 1266 (D. Col. 1971)

Zucker v. *Panitz*, 299 F. Supp. 102 (S.D. N.Y. 1969)

Annotations of Key Cases.

Antonelli v. *Hammond*, 308 F. Supp. 1329 (D. Mass. 1970)

Plaintiff, John Antonelli, was a student at Fitchburg State College, a state-supported college in Massachusetts. He resigned as editor-in-chief of the newspaper, *The Cycle*, rather than submit his editorial freedoms to an advisory board, created by the college president to review the content of the newspaper for obscene matter prior to publication and to exercise its judgment as to the "responsible freedom of press in the student newspaper." Antonelli had been elected to his position by the student body; *The Cycle* was funded from a portion of the revenues derived from compulsory student activity fees.

The advisory board, composed of two faculty members, was established after the plaintiff had attempted to publish in *The Cycle* an article entitled "Black Moochie," written by Eldridge Cleaver. The theme of the article and its use of four-letter words were objectionable to college president Hammond. He believed that the student newspaper should provide interested students with an opportunity to develop their skills in journalism and should not be used as a vehicle to disseminate obscene matter. The defendant Hammond authorized the advisory board to spend the allocated funds for publication *if* it concluded that the edition was responsible. Antonelli filed a suit seeking injunctive and declaratory relief, contending that the president's action violated his constitutional rights.

The Court found for the plaintiff. It noted that no standards were established to guide the faculty advisors in reaching their decisions. The board's function was to censor the submitted material for obscene matter. While recognizing that obscenity does not fall within the realm of constitutionally protected speech, the court noted that before any system of prior restraints can resist constitutional challenge, the censoring body must set up elaborate procedural safeguards "calculated to avoid the danger that protected expression will be caught in the regulatory dragnet." As to what procedures should be constitutionally acceptable the court highlighted the Supreme Court requirements set out in *Freedman* v. *Maryland,* 380 U.S. 51 (1965). It pointed out, however, that "nothing of this sort is included in the system devised by the defendants for passing upon the contents of *The Cycle.*" It said, "The advisory board bears no burden other than exercising its judgments; there is no appeal within the system from any particular decision; and there is no provision for prompt final judicial determination." The Court concluded that the establishment of the advisory board by the defendant was *"prima facie* an unconstitutional exercise of state power." It also found that the defendant's withholding of funds derived from student activity fees for the publication of the paper could not be employed as a means to stifle constitutionally protected expression.

The case is also significant for the court's suggestion (at 1336) that the obscenity standard on university campuses should be higher due to their more mature, sophisticated populations. (Also footnote 6, p. 1335-36).

Brooks v. *Auburn University,* 412 F.2d 1171 (5th Cir. 1969)

This case involved an appeal from a district court decision restraining the president of Auburn University from barring the scheduled appearance on the Auburn campus of The Reverend William Sloan Coffin, a convicted felon. The action was brought by students and faculty members who alleged that the president's action was prior restraint of speech which violated their constitutional right to hear.

The Circuit Court affirmed the decision of the lower court. In doing so, the court noted that normal university procedures were followed in extending Reverend Coffin an invitation to speak. The students' request had been formally approved by an officially chartered student-faculty board. However, since the university had no official rules and regulations governing speaker eligibility, the placing of restrictions on the appellees' First Amendment rights was left to the unbridled discretion of the president. The court held this exercise to be an impermissible prior restraint. It pointed out that its decision should not be construed to mean that the president could not bar a speaker under any circumstances. In this situation, however, no evidence was presented which would justify such an action on the part of the president. The court said, "Here there was no claim that Reverend Coffin's appearance would lead to violence or disorder or that the university would be otherwise disrupted."

Buchanan v. *Oregon,* 250 Ore. 244, 436 P.2d 729 (1968)

This case involved an appeal from a judgment of contempt against the editor of the University of Oregon student newspaper, *The Emerald.* The editor involved refused to disclose the identity of her news sources to a grand jury investigating the use of marijuana in Lane County, Oregon. Miss Buchanan had promised her sources that if she were allowed to interview them concerning the use of marijuana locally and on the Oregon campus, she would not reveal their names to anyone. The defendant argued that she had a constitutional right to refuse to disclose the identities of her sources; that the constitutionally protected right to freedom of the press necessarily included the freedom to gather news; and, that, in order to ensure a continued free flow of information, she was constitutionally protected in preserving the anonymity of her sources. While recognizing that the legislature could enact by statute some type of privilege for newsmen, the court flatly rejected the defendant's argument and held that freedom of the press did not give a newspaper reporter a constitutional right to preserve the anonymity of a news source in the face of a court order requiring disclosure.

The *Buchanan* decision rests on stronger footing today due to a recent Supreme Court ruling, *United States* v. *Caldwell,* 408 U.S. 665 (1972), wherein it was held that the First Amendment does not protect a newspaperman from refusing to answer questions from a grand jury as to the identity of his news sources.

Channing Club v. *Board of Regents of Texas Tech University,* 317 F. Supp. 688 (N.D. Texas 1970)

The plaintiffs in this case sought declaratory and injunctive relief against the officials of Texas Tech University who prohibited the distribution on campus of the *Catalyst,* a newspaper published by the Channing Club, an unincorporated association recognized by Texas Tech University, a public school of higher education. The publication contained some language which university officials found objectionable; they outlawed its distribution since they felt that they had the "right to prohibit matter which does not have any literary value and which uses lewd, indecent, and vulgar language."

The court granted the requested relief. The plaintiffs offered evidence which showed that there were areas of the campus which had been designated for the sale and distribution of printed matter. Further, they showed that publications sold in these areas contained the same or similar language that the school officials found objectionable in the *Catalyst,* yet these other publications had not been prohibited from sale or distribution on campus. There were also publications in the university library which were either required or recommended reading and which also contained examples of the language found to be objectionable in the Channing Club's newspaper. From the evidence presented, the court held that the university's action was discriminatory and a denial of "equal protection of the laws." The defendants made no showing that a campus disruption or violation of other students' rights would be likely to occur if the *Catalyst* were distributed.

The Channing Club case is important because it shows that university bans upon sale and distribution of literature are vulnerable to equal protection challenges as well as to free speech and due process attacks. It also provides some hints as to what facts may be considered, individually or collectively, to determine "substantial disruption"—that is, disruption of the university or its activities by threats or act of violence, hostile remarks, and restrictions on the rights of other students. Since a threat of substantial disruption would have been grounds to curtail free expression, the court considered this rather fully. The court stated that university officials must be able to point to something more than ungrounded fears when restricting free expression. It said, "It is not

enough that administrative officials anticipated the possibility of some disturbance; uncrystalized apprehension of disruption cannot overcome the right to free expression."

Dickey v. *Alabama State Board of Education,* 273 F. Supp. 613 (M.D. Ala. 1967)

In this case the plaintiff, Gary Clinton Dickey, sought a preliminary injunction to compel state school officials to reinstate him as a student in Troy State College on the ground that he had been denied substantive due process in his expulsion and/or suspension from the school. Plaintiff was a student in good standing at Troy State College and had made his intention to continue his education at Troy State during 1967-68 known to school officials. In July, 1967, he was notified by the Dean of Men that the Student Affairs Committee had voted not to readmit him "at this time." Plaintiff sought an order to rescind the school's action alleging in his complaint that he had been deprived of his constitutionally guaranteed rights. The court ordered his reinstatement on the ground that due process required notice and an opportunity for a hearing before a student can be expelled or suspended from a state-supported college or university, citing *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150 (5th Cir. 1961). In compliance with the court's order Troy State College authorities rescinded their earlier action. They then gave notice to Dickey that he was being charged with "insubordination" and that a hearing was to be held. After the hearing, Dickey was advised that the Student Affairs Committee had voted not to admit him for one academic year. Upon receipt of the Committee's decision, Dickey brought suit for injunctive relief.

The charge of "insubordination" was based on Dickey's refusal to obey the instructions of his faculty advisor and the college president relative to the publication of an editorial which Dickey had written for the school newspaper. In his editorial Dickey praised the president of the University of Alabama for the position he had taken in support of the rights of university students to academic freedom. Dickey was informed by his faculty advisor and the Troy State College president that the editorial could not be published. Disregarding their orders, Dickey published the word "Censored" diagonally across the blank space where the editorial would have been found in the college newspaper and mailed the editorial to a Montgomery newspaper for publication. His alleged "willful and deliberate" insubordination in pursuance of these acts was the sole basis for his suspension.

The court ruled in Dickey's favor. It said that state college officials could not interfere with the student's right to free expression where the exercise of such right does not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," citing *Burnside* v. *Byars,* 363 F.2d 744 (5th Cir. 1966). The reason why Dickey had been denied the right to publish his editorial was a "rule" of the college president which prohibited the publication in the school newspaper of any material critical of the Governor and the State Legislature. While recognizing that a college must have certain rules and regulations in order to maintain and operate the institution, the court pointed out that these rules and regulations must be *reasonable.* They held that the rule in this case was an *unreasonable* exercise of the college authorities' discretion in formulating rules.

Eisner v. *Stamford Board of Education,* 440 F.2d 803 (2d Cir. 1971)

Although this case involves a secondary school system, it is relevant to the discussion of corresponding college or university problems because it involves constitutional considerations and doctrines broader in scope than secondary schools alone.

This case was an appeal from an order of a federal district court granting summary judgment to students challenging the constitutional validity of a school board policy with respect to distribution of printed or written matter on school grounds. The policy prohibited anyone from distributing "any printed or written matter on the grounds of any school or in any school building unless the distribution of such material shall have prior approval by the school administration." As to the type of material that could not be distributed, the policy stated that "no material shall be distributed which by its content or by the manner of distribution itself, will interfere with the proper and orderly discipline of the school, will cause violence or disorder, or will constitute an invation of the rights of others." The lower court ruled that any policy requiring prior submission of materials for approval would be unconstitutional in *all* circumstances. While affirming the lower court's conclusion that the board's policy was unenforceable, this court disagreed with their position that all prior restrainst were unconstitutional and modified the grant of injunctive relief so as to restrain only the enforcement of the particular policy involved.

The Circuit Court recognized that not *all* systems of prior restraint were unconstitutional. Even the grandfather case concerned this issue, *Near* v. *Minnesota*, 283 U.S. 697 (1931) did not lay down a "per se" rule of unconstitutionality. Indeed, the appeals court here ruled that the board's regulation passed "muster as authorizing prior restraints," noting that it did not prescribe punishment and did not prohibit distribution anywhere but on school grounds. It found the policy fatally defective, however, because of the lack of adequate procedural safeguards. Outlining the procedural formalities the Supreme Court set down regarding censorship in *Freedman* v. *Maryland*, 380 U.S. 51 (1965), the circuit court held that the school board must follow most, but not all, of the *Freedman* guidelines in order to pre-restrain student literature. Because it believed that it would be highly disruptive to the educational process for a secondary school principal to take a school newspaper editor to court every time he reasonably anticipated disruption and sought to restrain its cause, the court did not require school officials to seek a judicial decree bebefore they could enforce a policy of prior restraint. The Supreme Court, in *Freedman*, required elaborate court procedures before prior restraint would be allowed. Following the *Freedman* doctrine, however, this court held that an expeditious review procedure by school officials for submitted materials must be provided. It noted the present policy was "wholly deficient in this respect for it prescribe[d] no period of time in which school officials must decide whether or not to permit distribution." "To be valid," the court said, "the regulation must prescribe a definite brief period within which review of submitted material will be completed." The policy was further deficient, the court said, because it failed "to specify to whom and how the material may be submitted for clearance." Finally, the court ruled that the proscription against "distributing" written or printed material without prior consent was unconstitutionally vegue. It suggested that if the policy were drafted so as to require the prior submission of only *substantial* distributions it would pass the "void for vagueness" test because then the court said it "can reasonably be anticipated that in a significant number of instances there would be a likelihood that the distribution would disrupt school operations."

The cases of *Quarterman* v. *Byrd*, 453 F.2d 54 (4th Cir. 1971) and *Baughman* v. *Freienmuth*, 343 F. Supp. 487 (D. Md. 1972) involve prior restraint of literature in secondary schools quite similar to the *Eisner* case.

Goldberg v. *Regents of University of California*, 248 Cal. App. 2d 867 (1967)

In this case, plaintiffs challenged upon constitutional grounds their suspen-

sion and dismissal from the university in April, 1965. This was an appeal from a judgment of dismissal entered on an order sustaining the general demurrer of the defendant Regents.

Each of the plaintiffs had participated in rallies on campus held in early March to protest the arrest of a non-student who had displayed on campus a sign containing obscene and profane expressions. The plaintiffs used similar language and modes to express their protest and were, thereafter, charged by university officials with violation of the university-wide policy on student conduct and discipline. After hearings on the charges, plaintiffs were suspended or dismissed. The plaintiffs then sued for re-instatement claiming that their First Amendment rights had been violated and that they had been denied procedural due process. Their suit was dismissed.

The appellate court affirmed the lower court. In affirming, the court said that suspensions and dismissals were justified under the university's written disciplinary policy which the court also found not to be unconstitutionally vague. That policy prohibited conduct contrary to". . . proper standards of conduct and good taste. . . ." The university, in the court's eyes, had exercised its power to formulate and enforce reasonable rules and regulations governing student conduct.

It should be noted that the students were not punished for violating a rule prohibiting the use of obscene or profane language, but rather were punished under a general disciplinary policy. Having sustained this policy as a reasonable means to regulate student behavior, the court did not have to decide whether the expressions employed by the plaintiffs were obscene or profane. The reader is cautioned not to place too much reliance on the court's decision as to the sufficiency of definiteness of the university's disciplinary policy. Rather, administrators are urged to promulgate a more clear and definite disciplinary policy, spelling out in as much detail as is reasonably possible those acts or omissions which constitute impermissible student conduct and for which punishment may be imposed. Also note the recent Supreme Court ruling in *Papish II*.

Joyner v. *Whiting,* 341 F. Supp. 1244 (M.D.N.C. 1972), *rev'd,* F.2d (4th Cir. 1973)

Plaintiffs in this case were the student editor-in-chief of the campus newspaper, *The Campus Echo,* and the student body president of North Carolina Central University, a predominantly black, state-supported school. They brought this action seeking to enjoin the president of the university, defendant Whiting, from failing to support financially *The Campus Echo.* The defendant had originally temporarily withheld funds, which came from compulsory student fees, from the newspaper until an agreement was reached between the administration and newspaper board as to what journalistic standards the publication should meet. Ultimately, this issue wasn't settled and President Whiting announced "the permanent and irrevocable termination" of the already mandated funding of the newspaper.

President Whiting's reasons for these actions were well-intended and well-founded. A number of racially discriminatory positions had been taken by the newspaper staff. The plaintiff Joyner had informed the administration that no white or other non-negro would be able to serve on the staff of *The Campus Echo.* Then, the newspaper published the following statement: "Attention: Beginning next issue *The Campus Echo* will not run white advertising." In other portions of the issue were articles expressing opposition to and dissatisfaction with the increasing number of white and non-negro enrollees at the university. As a result of these racially discriminatory actions, the defendant refused to permit the continued funding of the newspaper.

The district court judge denied the plaintiff's request for relief. Since *The Campus Echo* was established and financially supported through compulsory student fees, and since its editor-in-chief received a salary, the newspaper was, as a matter of law, an agency of North Carolina Central University and of North Carolina. This being the case, the school, its agencies, and official representatives were subject to the constraints of the Fourteenth Amendment and the Civil Rights Acts. The court found plaintiffs' actions were constitutionally impermissible. Therefore, the state and the university could no longer lawfully support *The Campus Echo.* Thus, defendant Whiting's action was not only constitutionally permissible, but it was constitutionally *required.*

On the other hand, the Court said that the defendant could not *temporarily* suspend the funding of *The Campus Echo.* It feared that the defendant would control the paper's content and staff. Consequently, the president had no choice but to abolish the newspaper altogether. Indeed, the Court said that "future financial support for any campus newspaper at North Carolina Central University, of any sort, by any means, direct or indirect, from any source of funds, is declared *unlawful.*" The reason for this broad (in the author's opinion, over-broad) prohibition was to protect plaintiffs' First Amendment rights. No matter how praiseworthy the concept of integration may be, the university officials could not withhold funds for the campus newspaper contingent upon the editorial board's renouncement of racist policies and the adoption of a non-discriminatory posture. "No orthodoxy or particular point of view may be imposed by any means, direct or indirect, upon the students at any institution of education, by the State. . ." While this case is certainly interesting for its language, it is doubtful that the outcome will be followed by other courts. Note the recent decision of the Court of Appeals for the Fourth Circuit.

Lee v. *Board of Regents of State Colleges,* 441 F.2d 1257 (7th Cir. 1971)

This case involved an appeal from a summary judgment declaring that the plaintiffs had been unlawfully deprived of their First Amendment right to free expression by the refusal of the defendant to publish in the campus newspaper certain advertisements of an editorial nature. The Circuit Court affirmed.

The editorial advertisements sought to be published referred to a university employees' union and its purposes, the immorality of racial and religious discrimination, and the Vietnam War. These submissions for publication in the newspaper were rejected as being outside the adopted policies of the board to publish only certain types of advertising. In the court's opinion, the issue raised was whether the defendants, "having opened the campus newspaper to commercial and certain other types of advertising, could constitutionally reject plaintiff's advertisement because of its editorial character.

The court rested its decision upon the lower court's proposition that a state public body which disseminates paid advertising of a commercial type (the situation here) may not reject paid advertising on the basis that it is editorial in character. This, the court said, was discriminatory. Also, there did not seem to be any evidence that disruption would result from the publication of the editorial advertisements.

This case may be particularly relevant and significant because of the recent trend in campus newspapers to advertise socially unpopular or unacceptable conduct such as abortion counselling or information. The case of *Zucker* v. *Panitz,* 299 F. Supp. 102 (S.D. N.Y. 1969) concerns advertising censorship on the public high school level.

Norton v. *Discipline Committee of East Tennessee State University,* 419 F.2d 195 (6th Cir. 1969), *cert. denied,* 399 U.S. 906 (1970)

The *Norton* case involved an appeal from a district court's refusal to grant

appellants a mandatory injuntion to compel their re-instatement into East Tennessee State University. The appellants (Norton and others) were students at East Tennessee State University, a state-supported school. They were suspended by the Discipline Committee following a hearing on charges of distributing on campus "material of a false, seditious and inflammatory nature." The literature distributed by the appellants contained criticism of student apathy, allegations of "administrative tyranny," character assaults against the administration, and calls for student action. Specifically, the appellants made reference to other campus disturbances around the country; urged the students to "stand up and fight;" and to "assault the bastions of administrative tyranny;" referred to the university administrators as "despots;" and labelled the administration a "problem child" while urging their fellow students to "teach them (the administration) the lesson of reality. . . ." The lower court judge concluded that the literature on its face was so inflammatory and contained such disruptive characteristics that the university was justified in suspending the appellants for distributing the literature. He found that there was sufficient proof to enable the Discipline Committee to conclude that the "material was calculated to cause a disturbance and disruption of school activities and to bring about ridicule and contempt for the school authorities."

In a two-to-one decision the Circuit Court affirmed the District Court's decision. The majority viewed some of the appellant's literature to be an "open exhortation to the students to engage in disorderly and destructive activities." The use of an obscenity in referring to the administration and calling them despots was looked upon by the majority as a "vicious attack on the administration. . . calculated to subject it to riducule and contempt, and to damage the reputation of the University." Further, the court felt that it would be "difficult to maintain discipline on the campus of an institution of higher learning if conduct of this sort were tolerated," and it speculated about possible consequences saying, "we doubt that parents would send their college-age children to such an institution if they knew that the philosophy as contained in the literature was taught or sanctioned there." The majority was also concerned that the learning attitude of students would be detrimentally affected by the literature. "We cannot imagine that a student could have confidence in the teachers in a university such as the literature portrays." Finally, the majority seemed to attach much significance to the fact that twenty-five students went to the Dean's office complaining about the literature and urging disciplinary action against appellants.

On the basis of the evidence presented, the majority concluded that the university officials "did forecast disturbances and . . . acted quickly to prevent threatened disorders. . ." It said, "It is not required that the college authorities delay action against the inciters until after the riot has started and buildings have been taken over and damaged. The college authorities had the right to nip such action in the bud and prevent it in its inception."

The lone dissenter (Celebrezze, J.) felt simply that the evidence presented by the school was not sufficient to "forecast" a disruption within the meaning of the *Tinker* forecast rule.

The reader is cautioned not to place undue emphasis on this case when attempting to forecast substantial disruption." Although the majority did find enough facts to reach such a conclusion, the author's reading of the case indicates that their conclusion is barely supportable, at best. Part of the court's reasoning was based upon unsubstantiated fears and speculation; namely, what prospective students' parents would think of the institution if such activity were allowed to take place, and what attitudes the students themselves would hold toward their teachers due to the character portrayals in the literature. On the other hand, the dissent points out that "all concerned in the present case plainly admitted that there was not a single instance of actual

violence, disruption, or the interference with the rights of others." The *Norton* case is clearly out of step with other "forecast" holdings, *e.g.: Eisner, Channing Club, Burnside* and *Tinker* itself. The dissenting judge may have stated the law more correctly in this case.

Papish v. *Board of Curators,* 464 F.2d 147 (8th Cir. 1972); *rev'd,* F.2nd (4th Cir. 1973)

This case was an appeal from a lower court's refusal to grant plaintiff/appellant declaratory and injunctive relief on the ground that her dismissal from the University of Missouri for violation of a university rule of conduct was invalid under the First and Fourteenth Amendments. Barbara Papish, a graduate student in the University of Missouri School of Journalism, had distributed on the university campus, copies of the *Free Press,* an underground newspaper, which has as part of the cover page a cartoon showing a club-wielding policeman raping the Statue of Liberty and the Goddess of Justice. The plaintiff was dismissed on the ground that she had violated an article of the bylaws of the University Board of Curators which stated that "indecent conduct or speech. . ." is conduct not compatible with the University's functions and missions as an educational institution. At the time of her dismissal, the appellant was on disciplinary and academic probation.

The lower court, 331 F. Supp. 1321 (W.D. Mo. 1971), denied Miss Papish relief, holding that the above-mentioned portions of the newspaper were obscene and were not protected by the First Amendment. The Circuit Court affirmed the denial of relief, but rested its decisions on other grounds. It found that the rule by which Miss Papish was dismissed was constitutionally valid because it furthered a "legitimate University interest in providing the order and discipline essential to fostering an effective learning process and that its restriction on constitutional freedoms is not greater than is essential to the furtherance of that interest." Since the court noted that the record was devoid of any evidence that might show that the University sought to restrict the substantive message the newspaper was attempting to convey, the court concluded that Miss Papish suffered no harm to her rights. Rather, the court said, she was disciplined for "the manner in which she sought to exercise her rights."

The court expressed no view on the obscenity issue because the case could be disposed on the much narrower issue. The case provides a good discussion on the vagueness and overbreadth questions with regard to college rules and regulations. Further, although the lower court's opinion was not followed by the appeals court, it should be read for its insights on the obscenity issue with regard to student publications. However, note the very recent Supreme Court decision reversing the Circuit Court's ruling and limiting the power of university officials to punish students for the distribution of publications containing indecent language.

Tinker v. *Des Moines Independent Community School District,* 393 U.S. 503 (1969)

The petitioners in this case were three public schools in Des Moines, Iowa, who were suspended from school for wearing black armbands to protest the United States' policy in Vietnam. Their action was a violation of a regulation adopted by the area principals which stated that any student wearing an armband to school would be asked to remove it, and if one refused he would be suspended until he returned without the armband. The petitioners were aware of this adopted regulation. Soon after their suspension, petitioners brought suit for nominal damages and an injunction restraining the school officials and members of the school district board of directors from disciplin-

ing the petitioners. The District Court dismissed the complaint on the ground that the policy was a reasonable exercise of the principal's and Board's power to regulate student conduct, notwithstanding the fact that there was no finding of a substantial interference in the normal operations of the school. The Court of Appeals, sitting *en banc,* affirmed by an equally divided court. Petitioners then requested and were granted review by the Supreme Court.

The Supreme Court ruled in petitioners' favor, reversing the lower court and remanding the case back for further proceedings consistent with its opinion. The Court held that petitioners' wearing of the black armbands was within the protection of the First Amendment. In the court's words, "it was closely akin to 'pure speech'. . . ." and further, that neither sutdents nor teachers "shed their constitutional rights to freedom of speech or expression at the school house gate."

Significant to the court's decision was the fact that the record was almost totally devoid of any evidence that the petitioners' conduct interrupted school activities or interfered with the rights of other students. The court said ". . . the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct of those participating in it." Nor could the fact that the school authorities simply feared a disburbance because of petitioners' conduct justify the suspensions; ". . . undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."

The Court did not hold that school authorities were without authority to regulate student expression. However, it did limit and, very generally, define that authority. Adopting the test articulated in *Burnside* v. *Byars,* 363 F.2d 744, 749 (5th Cir. 1966), the Court held that "where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained." Later in its opinion, the Court added, ". . . conduct by the student, in class or out of it, which for any reason . . . materially disrupts classwork or involves substantial disorder or invasion of the rights of others, is, of course, not immunized by the constitutional guarantee of freedom of speech."

Since there was no evidence in the case that "material and substantial disruption" would result from petitioners' conduct, the Court's opinion contained no real guidance as to what facts and circumstances would satisfy the test. In doubt as to the meaning intended by the Supreme Court, the lower courts have been free to exercise their own judgment as to what constitutes a material and substantial disruption and, concomitantly, when student expression can be curtailed.

Trujillo v. *Love,* 322 F. Supp. 1266 (D. Coi. 1971)

Plaintiff, Dorothy Trujillo, a student at Southern Colorado State College, brought this action seeking a declaration that the defendants' conduct in censoring her writing and suspending her as a student newspaper editor was an unconstitutional interference with her First Amendment rights. She sought reinstatement to the position of managing editor of the student newspaper, as well as back pay and an injunction restraining the defendants from interfering with her freedom of expression. Prior to July, 1970, the student newspaper involved, the *Arrow,* had been financed with student activity fees, but because of a student government decision to allocate more funds to other student activities, the amount of money budgeted for the *Arrow* after July of that year had diminished. The college officials decided to help the student newspaper. They agreed to pay the cost of publishing the newspaper. The student government had only to pay for staff salaries and supplies. The college officials, now with a stake in the student newspaper, promulgated a publica-

tions policy under which the newspaper was to be operated as an "instructional tool" for journalism students, under faculty supervision. The failure of the administration to effectuate this policy and their attempt to review certain student writings in advance of publication are the key facts in this case.

Plaintiff had written and was prepared to publish two editorials, one critical of the college president and the other critical of a local judge. The faculty advisor to the newspaper would not permit their publication, stating that he felt them to be potentially libelous and a violation of journalism's canons of ethics. The plaintiff was thereupon suspended from her position because her opposition to the administration's action was considered by them to be evidence of her "unwillingness to learn."

The court sustained the plaintiff's claim since there was evidence that the college's new publication policy had not been sufficiently communicated to the student staff or discussed in the journalism classes, and that the faculty requirement directing the students to submit "controversial" writings for approval was not defined. The court found that "prior to the summer of 1970 the *Arrow* served as a forum for student expression and the new policy of the administration and faculty was not thereafter put into effect with sufficient clarity and consistency to alter the function of the newspaper." It concluded that, in fact, the newspaper had continued to serve as a student forum and that the sanctions and restraints visited upon the plaintiff and her writing were violative of her First Amendment rights.

The court went on to suggest that if the college officials had, *in fact*, implemented their publication policy (to operate the newspaper as an "instructional tool" for the journalism students) and fully communicated their intention to students, then the administration's action *may* have been upheld.

FOOTNOTES

AUTHOR'S NOTE: The words "college" and "university" are used interchangeably in this paper. Where they appear separately or in conjunction with one another no distinction, legal or otherwise, should be made. Both words are used simply to represent "institutions of higher education." The word "institution" is also used occasionally to represent "college" or "university," or both. The word "school," however, is generally used not to represent colleges and universities alone, but to imply "high" schools and, usually, "secondary" schools as well. All four types of schools can generally be implied where any reference to "school," not otherwise conditioned by the context, is made. In another vein, any reference to "college," "university," or "school" is usually meant to mean *public*, or *state-supported*, "college," "university" or "school." Generally speaking, a distinction should be made between *public* and *private* "colleges," "universities," and "schools." This distinction is more fully elaborated in the second chapter, *infra*. The word "student" as used in this paper generally means, individually or collectively, any regular matriculant at any *public* secondary school, high school, college or university, except where the context may indicate otherwise.

The words "speech," "expression," and "press," as used in this paper, generally mean *any* form of communication: verbal, or non-verbal, oral or written, obvious or symbolic. Except where the context clearly indicates otherwise, these words may be regarded as interchangeable. Likewise, the words "press," "publication" and "newspaper" are meant to be read interchangeably. If the context does not indicate otherwise, they are meant to imply *all* forms of "publication," including, but not limited to, newspapers, yearbooks, literary and humor magazines, underground newspapers, and even campus media such as radio and TV.

This paper has made liberal use of court cases involving high schools and secondary schools, particularly where no decent college-level cases existed. This decision is justified on the basis that the law tends to distinguish certain individual rights along adult/minor lines. While the minor seldom has all the rights vouchsafed to the adult, the adult invariably has the rights of the minor and generally more. Thus, one feels confident in extending the decisions of lower school cases to the college level, at least with respect to freedoms, if not limitations.

In conclusion, the author wishes to acknowledge the debt of gratitude he owes to his Research Associate, James R. Michal, Esq., and his secretary, Ms. Echo Innes, for their considerable contributions to the research, analysis, and preparation of this paper.

*M. McLuhan, THE GUTENBURG GALAXY 246 (1962).

**Concurring opinion, 274 U.S. 357, 375-77 (1927).

***February 27, 1959, printed in THE WORLD OF LAW, Vol. II, *The Law as Literature,* Ephraim London, Ed. Simon and Shuster, New York, 606, 608-09 (1960).

1. "Free speech does not mean wholly unrestricted speech. . . . The exercise of rights by individuals must yield when they are incompatible with the school's obligation to maintain the order and discipline necessary for the success of the educational process. However, any infringement of individual constitutional freedoms must be adequately related to this legitimate interest." *Antonelli* v. *Hammond*, 308 F. Supp. 1329, 1336 (D. Mass. 1970) [hereinafter cited as *Antonelli*]. *See also Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969) [hereinafter cited as *Tinker*]; *Brooks* v. *Auburn University*, 412 F.2d 1171 (5th Cir. 1972) [hereinafter cited as *Brooks*]; *Burnside* v. *Byars*, 363 F.2d 744 (5th Cir. 1966) [hereinafter cited as *Burnside*]; *Schwartz* v. *Schucker*, 298 F. Supp. 238 (E.D. N.Y. 1969). *Cf. Papish* v. *Board of Curators of University of Missouri*, 331 F. Supp. 132 (W.D. Mo. 1971) [hereinafter cited as *Papish I*], *aff'd*, 464 F.2d 147 (8th Cir. 1972) [hereinafter cited as *Papish II*] involving obscenity which is unprotected speech, but note the recent U.S. Supreme Court ruling reversing the Circuit Court. *Blackwell* v. *Issaquena County Board of Education*, 363 F.2d 749 (5th Cir. 1966) [hereinafter cited as *Blackwell*]. Where state power is used to limit constitutionally protected expression, these limitations must be no greater than is minimally necessary to achieve the state's legitimate purposes. *See U.S.* v. *O'Brien*, 391 U.S. 367 (1968); *Antonelli* at 1335.
2. U.S. Const. amend. I.
3. Note, *Media and the First Amendment in a Free Society*, 60 Geo. L.J. 871, 878 (1972).
4. The Fourteenth Amendment reads, in part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, . . ." U.S. Const. amend XIV, *See also Gitlow* v. *New York*, 268 U.S. 652 (1925). *Cf. Hodges* v. *United States*, 203 U.S. 1 (1906); *United States* v. *Cruikshank*, 92 U.S. 542 (1875).
5. *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 226-27 (1943).
6. *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 386-90 (1969).
7. *United States* v. *Paramount Pictures*, 334 U.S. 131 (1948); *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495 (1952).
8. *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965). *See also Brooks* at 192, 196; Van Alstyne, *The Judicial Trend Toward Student Academic Freedom*, 20 U. Fla. L. Rev. 290, 301 (1968).
9. *Lamont* v. *Postmaster General*, 381 U.S. 301, 308 (1965). *See also Snyder* v. *Board of Trustees of University of Illinois*, 286 F. Supp. 927 (N.D. Ill. 1968).
10. *Talley* v. *California*, 362 U.S. 60, 64 (1960); *Cf. Breard* v. *Alexandria*, 341 U.S. 622 (1951). For school cases in point, *see Quarterman* v. *Byrd*, 453 F.2d 54 (4th Cir. 1971) [hereinafter cited as *Quarterman*]; and *Riseman* v. *School Committee of City of Quincy*, 439 F.2d 148 (1st Cir. 1971).
11. *See Donbrowski* v. *Pfister*, 308 U.S. 479 (1965); *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58 (1963); and, *Wolff* v. *Selective Service Local Board No. 16*, 372 F.2d 817 (2d Cir. 1965).
12. *See, e.g., Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 377, 392 (1969).
13. *See* A. Meiklejohn, *Free Speech and Its Relation to Self-Government* 25 (1948).
14. *See* T. Emerson, *Toward a General Theory of the First Amendment*, 4-7 (1967); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 301 (1964) (Goldberg, J., concurring).
15. "In order for the state . . . to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker* at 509. "That the language is annoying or inconvenient is not the test. Agreement with the content or manner of expression is irrelevant; first amendment freedoms are not confined to views that are conventional, or thoughts endorsed by the majority." *Channing Club* v.

Board of Regents of Texas Tech University, 317 F. Supp. 688, 691 (N.D. Tex. 1970) [hereinafter cited as *Channing Club*]. This case involved the distribution of an allegedly "lewd" newspaper.

16. *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 571-72 (1942). *See also Whitney* v. *California*, 274 U.S. 359 (1927).
17. *Near* v. *Minnesota ex rel. Olsen*, 283 U.S. 697 (1931) [hereinafter cited as *Near*].
18. *Jacobellis* v. *Ohio*, 378 U.S. 184, 188 (1964). *See also A Book Named "John Cleland's Memoirs of a Woman of Pleasure"* v. *Attorney General of Massachusetts*, 383 U.S. 413 (1966).
19. *Near* at 716. *See also Eisner* v. *Stamford Board of Education*, 440 F.2d 803, 805 (2d Cir. 1971) [hereinafter cited as *Eisner*].
20. *Burnside* at 749. Cited approvingly in *Tinker* at 505, 509, 513. *See also Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613, 618 (M.D. Ala. 1967) [hereinafter cited as *Dickey*]; *Scoville* v. *Board of Education of Joliet Township*, 425 F.2d 10 (7th Cir. 1970), *cert. denied*, 400 U.S. 826 (1970) [hereinafter cited as *Scoville*]. *But cf. Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195 (6th Cir. 1969), *cert. denied*, 399 U.S. 906 (1970) [hereinafter cited as *Norton*]; *Blackwell*.
21. *United States* v. *O'Brien*, 391 U.S. 367, 376-77 (1968).
22. *See* Mr. Justice Frankfurter's concurrence in *Niemotko* v. *Maryland*, 340 U.S. 268, 273 (1951). *See also Tinker* at 513-14; *Dickey* at 617-18.
23. *See supra* note 20 and 22.
24. Mr. Justice Holmes in *Schenck* v. *United States*, 249 U.S. 47, 52 (1919).
25. Circuit Judge Kaufman lamenting in *Eisner* at 804-05 n.1.
26. *See, e.g., The Civil Rights Cases*, 109 U.S. 3 (1868).
27. This Amendment reads, in part: "nor shall any person . . . be deprived of life, *liberty*, or property, without due process of law." U.S. Const. amend. V [emphasis added].
28. This Amendment reads, in part: "No *State* shall make or enforce any law which shall abridge *the privileges or immunities* of citizens of the United States; nor shall any State deprive any person of life, *liberty*, or property, without due process of law; . . ." U.S. Const. amend. XIV § 1 [emphasis added].
29. *Lloyd Corporation* v. *Tanner*, 407 U.S. 551 (1972); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972); *Greene* v. *Howard University*, 412 F.2d 1128 (D.C. Cir. 1969); *Powe* v. *Miles*, 407 F.2d 73 (2d Cir. 1968); *Grossner* v. *Columbia University*, 287 F. Supp. 535 (S.D. N.Y. 1968); *Guillory* v. *Administrators of Tulane University of Louisiana*, 212 F. Supp. 674 (E.D. La. 1962). *But cf. Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F.2d 959 (4th Cir. 1963).
30. *See, e.g., Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Hammond* v. *University of Tampa*, 344 F.2d 73 (2d Cir. 1968); *Simpkins* v. *Moses H. Cone Memorial Hospital*, 323 F.2d 959 (4th Cir. 1963). *Cf. Bright* v. *Isenbarger*, 314 F. Supp. 1382 (N.D. Ind. 1970); *Guillory* v. *Administrators of Tulane University of Louisiana*, 212 F. Supp. 674 (E.D. La. 1962).
31. *Amalgamated Food Employees Union, Local 590* v. *Logan Valley Plaza*, 391 U.S. 308 (1968); *Marsh* v. *Alabama*, 326 U.S. 501 (1946).
32. *Lombard* v. *Louisiana*, 373 U.S. 267 (1963); *Peterson* v. *Greenville*, 373 U.S. 244 (1963).
33. *Adickes* v. *S. H. Kress Co.*, 398 U.S. 144 (1970). *But cf. Moose Lodge No. 107* v. *Irvis* 407 U.S. 163 (1972).
34. *Shelly* v. *Kramer*, 334 U.S. 1 (1948).
35. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Coleman* v. *Wagner College*, 429 F.2d 1120 (2d Cir. 1970); *Moses H. Cone Memorial Hospital*, 323 F.2d 959 (4th Cir. 1963).
36. *Id.* at 722.
37. *Id.* at 725 [emphasis added].

38. *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 175 (1972).
39. *Amalgamated Food Employees Union, Local 590* v. *Logan Valley Plaza*, 391 U.S. 308 (1968); *March* v. *Alabama* 326 U.S. 501 (1946).
40. *Greene* v. *Howard University*, 412 F.2d 1128 (D.C. Cir. 1969); *Powe* v. *Miles*, 407 F.2d 73 (2d Cir. 1968); *Bright* v. *Isenbarger*, 314 F. Supp. 1382 (N.D. Ind. 1970); *Grossner* v. *Columbia University*, 287 F. Supp. 535 (S.D. N.Y. 1968); *Guillory* v. *Administrators of Tulane University of Louisiana*, 212 F. Supp. 674 (E.D. La. 1962).
41. *See Bright* v. *Isenbarger*, 314 F. Supp. 1382, 1391-92 (N.D. Ind. 1970).
42. Although virtually every court considering a college case takes this posture at some point in the course of their opinion, it is perhaps best expressed in the *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education*, 45 F.R.D. 133, 135-6, 141 (W.D. Mo. 1968) [hereinafter cited as *General Order*], and cases which have relied on it, *e.g.*, *Esteban* v. *Central Missouri State College*, 290 F. Supp. 622 (W.D. Mo. 1968), *aff'd*, 415 F.2d 1077 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970).
43. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F.2d 959 (1963).
44. *Hammond* v. *University of Tampa*, 344 F.2d 951 (1965).
45. *Lloyd Corporation* v. *Tanner*, 407 U.S. 551 (1972); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972).
46. 365 U.S. 715 (1961). *See also Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F.2d 959 (1953).
47. This idea is expressed and legally supported in University of Georgia Institute of Higher Education/Center for Continuing Education, HIGHER EDUCATION: THE LAW AND INDIVIDUAL RIGHTS AND RESPONSIBILITIES 27 (1971).
48. *See Bright* v. *Isenbarger*, 314 F. Supp. 1382 (N.D. Ind. 1970) *But cf. Coleman* v. *Wagner College*, 429 F.2d 1120, 1127 (2d Cir. 1970) (Friendly, J., concurring); *Hammond* v. *University of Tampa*, 344 F.2d 951 (5th Cir. 1965).
49. *Hammond* v. *University of Tampa*, 344 F.2d 951 (5th Cir. 1965). *But cf. Greene* v. *Howard University*, 412 F.2d 1128 (D.C. Cir. 1969); *Guillory* v. *Administrators of Tulane University of Louisiana*, 212 F. Supp. 674 (E.D. La. 1962).
50. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).
51. *Coleman* v. *Wagner College*, 429 F.2d 1120 (2d Cir. 1970).
52. *Greene* v. *Howard University*, 412 F.2d 1128 (D.C. Cir. 1969); *Grossner* v. *Columbia University*, 287 F. Supp. 535 (S.D. N.Y. 1968).
53. *Post* v. *Payton*, 323 F. Supp. 799 (E.D. N.Y. 1971). In this case, the fact that a campus-owned and financed radio was licensed by the FCC did not, by itself, constitute "state action."
54. *Cf. Coleman* v. *Wagner College*, 429 F.2d 1120 (2d Cir. 1970); *Bright* v. *Isenbarger*, 314 F. Supp. 1382 (N.D. Ind. 1970); *Grossner* v. *Columbia University*, 287 F. Supp. 535 (S.D. N.Y. 1968).
55. *See supra* note 20.
56. *Cf. Panarella* v. *Birenbaum*, 302 N.Y.S. 2d 427 (1969) which seems to be of questionable validity since it was decided on the wrong grounds, the state not being the "publisher" of a newspaper *(Dickey)*. In addition, the decision was only a lower state court ruling, not binding on any other state nor any federal court.
57. Among the important campus press cases are *Antonelli*; *Dickey*; *Norton*; *Papish*; *Trujillo* v. *Love*, 322 F. Supp. 1266 (D. Col. 1971) [hereinafter cited as *Trujillo*]; *Buchanan* v. *Oregon*, 250 Ore. 244, 436 P.2d 729 (1968) [hereinafter cited as *Buchanan*]. All of these cases are federal district court, circuit court, or state supreme court decisions, each of which finds support in a prior Supreme Court decision. *Antonelli*, *Dickey*, and *Trujillo* involving censorship relate to *Near*; *Norton* involving substantial disruption to the school relates to *Tinker*; *Papish I* involving obscenity relates to *Roth* v. *United States*, 354 U.S. 476 (1957); and *Buchanan* involving newsman's privilege relates to

United States v. *Caldwell*, 408 U.S. 665 (1972) (companion case, *Branzburg* v. *Hayes*). The often cited *Tinker* case is celebrated precisely because it is one of the few public school "free expression" cases to reach the Supreme Court. *See West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1942). However, note recent Supreme Court decision reversing the Circuit Court's ruling in *Papish*.

58. *Buchanan*.
59. *United States* v. *Caldwell*, 408 U.S. 665 (1972) (companion case, *Branzburg* v. *Hayes*).
60. In these cases, the legal responsibility to divulge "confidential" news sources when confronted by a court order or grand jury subpoena was announced.
61. *Buchanan*.
62. I have not found a single instance in which a campus newspaper was sued civilly or criminally in the highest state or federal courts.
63. *Time*, Jan. 1, 1973, at 44, col. 3; *Washington Post*, Feb. 23, 1973, A, at 2; *Time*, March 5, 1973, at 64-65.
64. *Time*, March 5, 1973, at 64-65.
65. *Buchanan*.
66. School of Journalism, University of Missouri at Columbia, *Student Press Revisited* 1-5 (Freedom of Information Report No. 260, April, 1971).
67. *Id.* at 2-3. *See Trujillo*; *Antonelli*; *Dickey*; *Baughman* v. *Freienmuth*, 343 F. Supp. 487 (D. Md. 1972) [hereinafter cited as *Baughman*]; *Korn* v. *Elkins*, 317 F. Supp. 138 (D. Md. 1970). *Cf. Papish I* and *II*.
68. *Dickey*. Compare *Korns* v. *Elkins*, 317 F. Supp. 138 (D. Md. 1970) with *Papish I* and *II*. I cannot find a single state supreme court or federal court case in which a criminal obscenity or civil libel decision has been held against a campus newspaper. *See also Trujillo*.
69. *Fellner* v. *McMurray*, 323 N.Y.S. 2d 337 (1971) is a case concerning students who withheld their activity fees.
70. Freedom of Information Report No. 260 *supra* note 66, at 3-5. *Trujillo*; *Dickey*; and *Korn* v. *Elkins*, 317 F. Supp. 138 (D. Md. 1970). *Cf. Papish I* and *II*.
71. "... persons granted special privileges or rights under state law, ... may be required to possess and exhibit superior moral standards. These principles by analogy apply to students in an institution of higher learning." *Papish I* at 1333. *See also General Order*; *Golberg* v. *Regents of the University of California*, 248 Cal. App.2d 867, 874, 879 (1967).
72. *Papish I* at 1328; *General Order* at 145.
73. *See, e.g., Brooks; Antonelli* at 1336.
74. *Papish I* at 1333.
75. This is not a direct quote. Rather, it is a paraphrase of: "substantial disruption or material interference with school activities. ..." *Tinker* at 514.
76. The "test" is cited numerous times in the course of the majority opinion in *Tinker*, but it actually originated with *Burnside*.
77. *See Papish I* and *II*; *Eisner*; *Scoville*; *Norton*; *Brooks*; *Channing Club*; and, *Antonelli*.
78. I have real difficulty including this two-to-one Circuit Court decision under the basic "*Tinker* rule," even though the Supreme Court refused to review the decision itself. Far from causing any disruption, the plaintiffs here seem to have done nothing more than issue a muck-raking, and slightly vulgar, broadside calling fellow students to organize and resist the administration. Although it may have been "calculated to cause a disruption," it achieved only a mild backlash. Frankly, the factual showing doesn't equal that in some cases, *e.g.*, *Scoville* and *Channing Club*, in which the courts have held that the "*Tinker* test" wasn't satisfied. The dissent seems to have presented a more legally sound argument and reasoning in this case. *See also Quarterman*.
79. *Compare Burnside with Blackwell*.
80. *See Papish I*.
81. *Papish I* at 1333.

82. *Antonelli* at 1336.
83. *Channing Club.*
84. *Id.*, citing *Gitlow* v. *New York*, 268 U.S. 652 (1925).
85. *Id.*, citing *Near.*
86. *Id.*, citing *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1942).
87. *Id.*, citing *Tinker, Blackwell* and *Burnside.*
88. *Tinker* at 506. *See also Brooks* at 192; *Dickey* at 618.
89. Schwartz, *The Student, The University, and The First Amendment*, 31 Ohio St. L.J. 635, 666-69 (1970).
90. *Tinker* at 507; *Dickey* at 617-18.
91. *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1942).
92. *Tinker* at 511. Similar wording may be found in other public school First Amendment cases. *See Scoville; Trujillo; Channing Club; Antonelli;* and, *Dickey.*
93. *Trujillo* at 1270-71; *Antonelli* at 1337-38. *See also Zucker* v. *Panitz*, 299 F. Supp. 102, 103-04 (S.D. N.Y. 1969) [hereinafter cited as *Zucker*]. The latter case involves a high school newspaper.
94. *Id.*
95. *Trujillo.*
96. *Id.* at 1270.
97. *Zucker.*
98. *Trujillo* at 1270.
99. Schwartz, *The Student, The University, and The First Amendment*, 31 Ohio St. L.J. 635, 661 (1970).
100. *Trujillo* at 1270.
101. *Id.*
102. *Trujillo* at 1270; *Antonelli* at 1336-8; *Dickey* at 618.
103. I can find no college cases directly in point, although I cannot imagine why the libel tests used in the case of the public press and the society at large, *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964) and its progeny, would not apply equally to student authors and college publications. *See generally Baughman; Trujillo.*
104. *Papish I; see Papish II. But cf. Antonelli* at 1336.
105. *Tinker* at 508-09; *Trujillo* at 1270; *Antonelli* at 1336; *Dickey* at 618. *Cf. Norton.*
106. *Channing Club. See Quarterman; Eisner;* and *Baughman.*
107. *Antonelli* at 1337. *See also Trujillo* at 1270.
108. *Papish I* at 1331; *Trujillo* at 1271; *Antonelli* at 1337; *Dickey* at 617.
109. *Quarterman* at 57-59; *Eisner* at 809; *Baughman* at 491; *Trujillo* at 1271; *Channing Club* at 691-92; and, *Dickey* at 617.
110. *See, e.g., Antonelli* at 1336-37 (president's control limited by statute). *Joyner* v. *Whiting*, 341 F. Supp. 1244 (M.D. N.C. 1972) [hereinafter cited as *Joyner*]; but note the recent decision of the Court of Appeals for the Fourth Circuit reversing the lower court.
111. *Joyner; Trujillo; Antonelli; Dickey. See*, recent Supreme Court ruling in *Papish II.*
112. *See supra* note 102.
113. *Trujillo; Antonelli; Dickey.*
114. *Trujillo; Antonelli.*
115. Note the distinction I made earlier with regard to a "laboratory" newspaper which was part of an academic exercise. *See also Trujillo* at 1271; *Antonelli* at 1337.
116. *Trujillo* at 1270.
117. *Trujillo* at 1270; *Channing Club* at 691. *See*, recent Supreme Court ruling in *Papish II.*
118. *Trujillo; Antonelli; Dickey.*
119. Despite the fact that the university is not legally the "owner-publisher" of its own student newspaper (*see supra* note 102), I can see no way in which it can avoid being joined in a suit against the newspaper for its indiscretion (as the "parent" or "sponsoring" institution—*see Antonelli* at 1337) except to dissolve the newspaper altogether. Since we can find no evidence of any university being held liable in a court of law for the

indiscretions of its students' newspaper, we would submit that the "liability of the university" is a rather illusory and spurious reason to try to regulate a student publication anyway.

120. *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967); *Shelton* v. *Tucker*, 364 U.S. 479 (1960).
121. *Joyner; Dickey* at 618.
122. Rev. Rul. 72-513, 1972 Int. Rev. Bull. No. 43.
123. Harvard, Yale, Columbia, the University of Michigan, the University of California at Berkeley, and Stanford University to name just a few.
124. Chronicle Of Higher Education, Nov. 6, 1972, vol. 7, no. 7, at 3.
125. *Id.*
126. *Trujillo.*
127. *Id.* at 1271.
128. *See, e.g., Dickey* at 618.
129. *Developments in the Law—Academic Freedom*, 81 Harv. L.Rev. 1045, 1052 (1968); Van Alstyne, *The Judicial Trend Toward Student Academic Freedom*, 20 U. Fla.L.Rev. 290 (1968).
130. *Developments in the Law—Academic Freedom*, 81 Harv.L.Rev. 1045, 1053 (1968).
131. *See, e.g., General Order* at 135-36.
132. U.S. Const. amend. I. *See Epperson* v. *Arkansas*, 393 U.S. 97 (1968).
133. U.S. Const. amend. XIV. *See Meyer* v. *Nebraska*, 262 U.S. 390 (1923).
134. *See Antonelli* at 1336-38. *See also Joyner; Trujillo.*
135. *Quarterman; Channing Club. See also Tinker; Lee* v. *Board of Regents of State Colleges*, 441 F.2d 1257 (7th Cir. 1971); *Zucker; Cf. Norton.*
136. *Trujillo* at 1270; *Antonelli* at 1337; and, *Dickey* at 617-19. *See also Brooks.*
137. *Trujillo.*
138. *Joyner; Antonelli. See also Trujillo* at 1270.
139. 323 N.Y.S.2d 337 (1971).
140. 141 S.W.2d 713, 717 (Tex. Civ. App. 1940).
141. 15. Am.Jur.2d *Colleges and Universities* 19 (1964).
142. *Antonelli* at 1336.
143. *Id.* at 1336-37.
144. *See Quarterman; Eisner; Scoville; Baughman; Channing Club; Antonelli;* and, *Dickey*. All concern the abuse of discretion, however.
145. *Fellner* v. *McMurray*, 323 N.Y.S.2d 337 (1971); *Antonelli.*
146. *Id. See also Joyner.* This does not mean that *everything* which is submitted must be published, however. Non-discriminatory editorial judgment with regard to the quality of the article, the availability of space, etc. will be allowed. *See Alvins* v. *Rutgers*, 385 F.2d 151 (3rd Cir. 1967), *cert. denied*, 390 U.S. 920 (1968).
147. The two principal cases in point are *Lee* v. *Board of Regents of State Colleges*, 441 F.2d 1257 (7th Cir. 1971) and *Zucker.*
148. *See generally Fellner; Channing Club;* and, *Zucker.*
149. *Trujillo* at 1270-71.
150. *Id.* at 1271.
151. *Antonelli* at 1335, citing *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 70 (1963). *See also Trujillo* at 1271.
152. *See generally Quarterman; Eisner; Trujillo;* and, *Dickey.*
153. *Trujillo; Channing Club; Antonelli;* and, *Dickey. Cf. Papish; Norton;* and *Golberg* v. *Regents of the University of California*, 248 Cal. App.2d 867 (1967). *See also Quarterman; Eisner;* and, *Scoville.*
154. *See, e.g., Trujillo.*
155. *See Trujillo* at 1270-71.
156. *Trustees of Columbia University* v. *Oxenfeld*, 241 N.Y.S. 4 (1930); *Columbia Grammar School* v. *Clawson*, 200 N.Y.S. 768 (1923); *Rickard* v. *Caton College Co.*, 88 Minn. 242, 92 N.W. 958 (1903). *See also Commonwealth* v. *Banks*, 198 Pa. 397, 48 A. 277 (1901). *Cf. Dubuque German College & Seminary* v. *St. Joseph College*, 169 N.W. 405 (Iowa 1918); *Southern Medical College* v. *Thompson*, 92 Ga. 564, 18 S.E. 430 (1893).
157. *John Roberts Mfg. Co.* v. *University of Notre Dame Du Lac*, 258 F.2d 256 (7th Cir. 1958).

158. *Cornell University* v. *Messing Bakeries*, 285 App. Div. 940, 138 N.Y.S.2d 280; *aff'd*, 309 N.Y. 722, 128 N.E.2d 421 (1955), *rehearing denied*, 309 N.Y. 800, 130 N.E.2d 601 (1955).
159. *Yale University* v. *Benneson*, 147 Conn. 254, 159 A.2d 169 (1960).
160. *University of Notre Dame DuLac* v. *Twentieth Century-Fox Film Corp.*, 22 App. Div.2d 452, 256 N.Y.S.2d 301, *aff'd*, 15 N.Y.2d 940, 207 N.E.2d 508, 259 N.Y.S.2d 832 (1965).
161. *Yale University* v. *Benneson*, 147 Conn. 254, 159 A.2d 169 (1960). *See Dubuque German College & Seminary* v. *St. Joseph College*, 169 N.W. 408 (Iowa 1918).
162. *John Roberts Mfg. Co.* v. *University Notre Dame DuLac*, 258 F.2d 256 (7th Cir. 1958); *Trustees of Columbia University* v. *Oxenfeld*, 241 N.Y.S. 4 (1930); *Columbia Grammar School* v. *Clawson*, 200 N.Y.S. 768 (1923); *Rickard* v. *Caton College, Co.*, 88 Minn. 242, 92 N.W. 958 (1903). *But cf. University of Notre Dame DuLac* v. *Twentieth Century-Fox Film Corp.*, 22 App. Div.2d 452, 256 N.Y.S.2d 301, *aff'd.*, 15 N.Y.2d 940, 207 N.E.2d 508, 259 N.Y.S.2d 832 (1965); *Yale University* v. *Brenneson*, 147 Conn. 254, 159 A.2d 169 (1960); *Southern Medical College* v. *Thompson*, 92 Ga. 564, 18 S.E. 430 (1893).
163. *Cf. Yale University* v. *Brenneson*, 147 Conn. 254, 159 A.2d 169 (1960); *Columbia Grammar School* v. *Clawson*, 200 N.Y.S. 768 (1923); *Rickard* v. *Caton College Co.*, 88 Minn. 242, 92 N.W. 958 (1903); *Commonwealth* v. *Banks*, 198 Pa. 397, 48 A. 277 (1901); *Southern Medical College* v. *Thompson*, 92 Ga. 564, 18 S.E. 430 (1893).
164. *Yale University* v. *Brenneson*, 147 Conn. 254, 159 A.2d 169 (1960); *Cornell University* v. *Messing Bakeries*, 285 App. Div. 490, 138 N.Y.S.2d 280, *aff'd.* 309 N.Y. 722, 128 N.E.2d 421 (1955), *rehearing denied*, 309 N.Y. 800, 130 N.E.2d 601 (1955).
165. *Dubuque German College & Seminary* v. *St. Joseph College*, 169 N.W. 405 (Iowa 1918).
166. *Trustees of Columbia University* v. *Oxenfeld*, 241 N.Y.S. 4 (1930); *Columbia Grammar School* v. *Clawson*, 200 N.Y.S. 768 (1923); *Rickard* v. *Caton College Co.*, 88 Minn. 242, 92 N.W. 958 (1903); *Commonwealth* v. *Banks*, 198 Pa. 397, 48 A. 277 (1901). *See also John Roberts Mfg. Co.* v. *University of Notre Dame DuLac*, 258 F.2d 256 (7th Cir. 1958). *But cf. Southern Medical College* v. *Thompson*, 92 Ga. 564, 18 S.E. 430 (1893).
167. *Trustees of Columbia University* v. *Oxenfeld*, 241 N.Y.S. (1930); *Columbia Grammar School* v. *Clawson*, 200 N.Y.S. 768 (1923); *Rickard* v. *Caton College Co.* 88 Minn. 242, 92 N.W. 958 (1903); *Commonwealth* v. *Banks*, 198 Pa. 397, 48 A. 277 (1901).
168. *See generally Baughman* at 190-91; *Papish I* at 1331; and, *Channing Club*.
169. *United States* v. *Caldwell*, 408 U.S. 665 (1972) (companion case *Branzburg* v. *Hayes*).
170. *Buchanan*.
171. *See, e.g., Time*, Jan. 1, 1973, at 44, col 3.
172. *United States* v. *Caldwell*, 408 U.S. 665 (1972) (companion case *Branzburg* v. *Hayes*).
173. *See, e.g., Time*, March 5, 1973, at 64-65.
174. This argument is made at its simplest in *Buchanan*.
175. *See, e.g., Time*, March 5, 1973, at 65; *Buchanan* at 732 n. 17.
176. *Cf. Joyner*.
177. *Lee* v. *Board of Regents of State Colleges* 441 F.2d 257 (7th Cir. 1971).
178. *Zucker*. *See also Wirta* v. *Alameda-Contra Costa Transit District*, 68 Cal.2d 51, 434 P.2d 982, 64 Cal. Rptr. 430 (1967), involving "peace" ad on bus.
179. *See generally Alvins* v. *Rutgers*, 385 F.2d 151 (3rd Cir. 1967), *cert. denied*, 390 U.S. 920 (1968).
180. *Fellner* v. *McMurray*, 323 N.Y.S.2d 337 (1971).
181 *See supra* note 115, at 129-31.

182. *See, e.g., Antonelli* at 1336-37.
183. There is a "heavy presumption" against the "constitutional validity" of rules which attempt to censor. *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58 (1963).
184. Federal District Court decision in *Brooks* v. *Auburn University*, 296 F. Supp. 188, 194 (M.D. Ala. 1969). *See also Quarterman; Eisner;* and, *Baughman.*
185. *Supra* note 181.
186. *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964); *Roth* v. *United States*, 354 U.S. 476 (1957); *Dennis* v. *United States*, 341 U.S. 494 (1951); *Feiner* v. *New York*, 340 U.S. 315 (1951); *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942); and, *Schenck* v. *United States*, 249 U.S. 47 (1919).
187. 50 Am. Jur.2d *Libel and Slander* 3 (1970).
188. 376 U.S. 254 (1964).
189. *Garrison* v. *Louisiana*, 379 U.S. 64 (1954).
190. 383 U.S. 75, 85 (1966).
191. *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130, 155 (1967).
192. 403 U.S. 29, 44 (1971).
193. 391 U.S. 563 (1968).
194. *See generally Tinker.*
195. *Id.*
196. *Antonelli* and *Dickey.*
197. *See* Annot., 33 A.L.R.3rd 330 (1971).
198. *See* Annot., 36 A.L.R.3rd 330 (1971).
199. *Rubtchinsky* v. *State University of New York at Albany*, 260 N.Y.S.2d 256 (1965).
200. *See Baughman.*
201. The leading case is *Near. Staub* v. *Baxley*, 355 U.S. 313 (1958); *Niemotko* v. *Maryland*, 340 U.S. 268 (1950); *Cantwell* v. *Connecticut*, 310 U.S. 268 (1950); *Lovell* v. *Griffin*, 303 U.S. 444 (1938).
202. *Norton.*
203. The dissent in *Norton* is excellent, and persuasive. The finding of the majority in *Norton* should be contrasted with similar situations which achieved *opposite* results, *e.g., Tinker, Channing Club.*
204. 50 Am. Jur.2d *Libel and Slander* 3 (1970).
205. *See, e.g., A Book Named "John Cleland's Memoirs of a Woman of Pleasure"* v. *Attorney General of Massachusetts*, 383 U.S. 413 (1966); *Roth* v. *United States*, 354 U.S. 476 (1957); *Kingsley Books, Inc.* v. *Brown*, 354 U.S. 436 (1957).
206. 354 U.S. 476, 489 (1957).
207. *Manual Enterprises, Inc.* v. *Day*, 370 U.S. 478, 486, 489 (1962).
208. *A Book Named "John Cleland's Memoirs of a Woman of Pleasure* v. *Attorney General of Massachusetts*, 383 U.S. 413, 418 (1966).
209. *Ginzburg* v. *United States*, 383 U.S. 463, 470 (1966).
210. *Kingsley Books, Inc.* v. *Brown*, 354 U.S. 436 (1957).
211. *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 70 (1963).
212. *Butler* v. *Michigan*, 352 U.S. 380 (1957); *Ginsberg* v. *New York*, 390 U.S. 629 (1968), *rehearing denied*, 391 U.S. 971 (1968).
213. *Quarterman* at 57 and n.7. *Schwartz* v. *Schucker*, 298 F. Supp. 238 (D.C. N.Y. 1969). *See also* Justice Stewart's concurring opinion in *Tinker* at 515; *Eisner* at 808 and n. 5; Haskell, *Student Expression in the Public Schools: Tinker Distinguished* 59 Geo. L.J. 37 (1970).
214. *Mishkin* v. *New York*, 383 U.S. 502 (1966).
215. *See Eisner* at 808 and n. 5; *Antonelli* at 1336.
216. *Papish I* at 1331. *See also Dickey* at 617. *But cf. Channing Club.*
217. *Papish I* at 1329-30. Admittedly this is the lower court decision and is not terribly "liberal" in its orientation, but it is not "outlandishly" conservative. It is an arguably correct stand on the issue of college obscenity. However, note a recent Supreme Court decision reversing *Papish II.*
218. *See, e.g., Papish* at 1331.
219. *See* Freedom of Information Center Report No. 260, *supra* note 66.

220. *Papish I and II; Norton. See also Quarterman; Eisner;* and, *Baughman. Cf. Antonelli* at 1336. *But cf.* recent Supreme Court decision on *Papish II.*
221. *Tinker; Papish I and II;* and, *General Order.*
222. *Trujillo; Channing Club; Antonelli;* and *Dickey.*
223. *See, e.g., Baughman* and *Papish I.*
224. *Papish I and II* is about the only case. However, note recent Supreme Court decision reversing the Circuit Court ruling in *Papish II.*
225. *Norton.*
226. *Channing Club.*
227. 248 Cal. App.2d 867 (1967).
228. 307 F. Supp. 517 (C.D. Cal. 1969).
229. *Id.* at 526.
230. *Id.* at 527. *But cf.* recent Supreme Court decision on *Papish II.*
231. *Tinker.*
232. *Goldberg* v. *Regents of the University of California*, 248 Cal. App.2d 867 (1967).
233. *Vought* v. *Van Buren Public Schools*, 306 F. Supp. 1388 (E.D. Mich. 1969).
234. *Papish I.*
235. *Papish II.*
236. *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 572 (1942).
237. *Schenck* v. *United States*, 249 U.S. 47, 52 (1919).
238. *Tinker* at 513.
239. *Eisner* at 807. *See also Tinker; Papish II;* and, *Channing Club.*
240. *Norton* at 200.
241. Schwartz, *The Student, the University, and the First Amendment*, 31 Ohio St. L.J. 635, 673-74 (1970).
242. *Baughman* at 491. *See also Brooks; Papish II; Blackwell; Burnside;* and, *Channing Club.*
243. *See, e.g., Brooks. See also Tinker.*
244. 391 U.S. 563 (1968).
245. Although this quotation is taken from Judge Celebrezze's dissent in *Norton* at 211, it is an accurate statement of the law, with which the majority would undoubtedly agree.
246. *Tinker.*
247. *Compare, e.g.: Channing Club* and *Norton.*
248. *Eisner* at 811.
249. *Quarterman* at 59 n. 10, quoting Nahmod, *Black Arm Bands and Underground Newspapers: Freedom of Speech in the Public Schools*, 51 Chicago Bar Record 144, 148-49 (1969).
250. *See, e.g., Norton; Blackwell;* and *Baughman.*
251. *Bachellar* v. *Maryland*, 397 U.S. 564 (1970); *Gregory* v. *Chicago*, 394 U.S. 111 (1969); *Niemotko* v. *Maryland*, 340 U.S. 268 (1951); *Terminiello* v. *Chicago*, 337 U.S. 1 (1949). *But cf. Norton.* A good article on this point is *Freedom of Speech and Assembly: The Problem of the Hostile Audience*, 49 Colum. L.Rev. 1118 (1949).
252. *Baughman* at 489.
253. *Id.* at 493.
254. *See* Freedom of Information Center Report No. 260, *supra* note 66, at 2-3.
255. *Dickey;* Schwartz, *The Student, The University, and The First Amendment*, 31 Ohio St. L.J. 635, 658-70 (1970).
256. *Sherbert* v. *Verner*, 374 U.S. 298 (1963); *Channing Club.*
257. *Antonelli*, at 1337.
258. Schwartz, *The Student, The University, and The First Amendment*, 31 Ohio St. L.J. 635, 658-70 (1970).
259. *Id.* at 669-70.
260. *Dickey. See Trujillo* and *Antonelli.*
261. *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 286 U.S. 930 (1961).
262. *Tinker.*
263. Haskell, *Student Expression in the Public Schools: Tinker Distinguished*, 59 Geo. L.J. 37 (1970).

264. *Baker* v. *Downey City Board of Education*, 307 F. Supp. 517 (C.D. Cal. 1969); *Goldberg* v. *Regents of the University of California*, 248 Cal. App.2d 867 (1967).
265. *Schenck* v. *United States*, 249 U.S. 47 (1919); *Norton*.
266. *Baker* v. *Downey City Board of Education*, 307 F. Supp. 517 (C.D. Cal. 1969); *Goldberg* v. *Regents of the University of California*, 248 Cal. App.2d 867 (1967). But, note recent Supreme Court decision reversing *Papish II*.
267. *Norton*.
268. *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942); *Schenck* v. *United States*, 249 U.S. 47 (1919); and *Siegel* v. *Regents of the University of California*, 308 F. Supp. 832 (N.D. Cal. 1970).
269. *Tinker* at 508. *See Burnside*.
270. *Norton* at 199.
271. *Fujishima* v. *Board of Education*, 460 F.2d 1355 (7th Cir. 1972); *Quarterman; Eisner;* and, *Baughman. Cf. Trujillo* and *Antonelli*.
272. *Freedman* v. *Maryland*, 380 U.S. 51 (1965); *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58 (1963); *Near;* and *Quarterman. Cf. Eisner* and *Baughman*.
273. *Eisner. But cf. Fujishima* v. *Board of Education*, 460 F.2d 1355 (7th Cir. 1972).
274. *Id.* at 508. *See Quarterman* at 58-9; *Eisner* at 806-07; and *Norton* at 200.
275. *Norton* at 199. Note the dissent in *Norton* on this point at 206.
276. *Tinker; Burnside;* and *Channing Club. Cf. Norton*.
277. *Eisner; Norton;* and *Baughman. See also* Haskell, *Student Expression in the Public Schools: Tinker Distinguished*, 59 Geo. L.J. 37 (1970).
278. *See, e.g., Quarterman* at 56; *Eisner* at 810; and *General Order* at 135-36.
279. *Joyner*.

AASCU is an organization of 300 regional state colleges and universities located in 47 states, the District of Columbia, Guam and the Virgin Islands. Two-thirds of them have graduate programs. They represent the fastest-growing group of four-year institutions in the nation, with a total enrollment of 2 million—25 per cent of the total national student population, and 30 per cent of those in four-year institutions.

American Association of State Colleges and Universities
One Dupont Circle, N.W., Suite 700
Washington, D.C. 20036 202/293-7070